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52D CONGRESS, 2d Session. | SENATE. | REPORT No. 1248.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1893.—Ordered to be printed.

Mr. FELTON, from the Select Committee on Forest Reservations in California, submitted the following

REPORT:

Your committee, appointed under the following resolution, viz—

> Whereas under the provisions of the act of Congress approved October 1, 1890, certain lands in the State of California were made forest reservations; and
>
> Whereas there were included in said reservation several thousand acres of land upon which homestead, preëmption, and other settlers had entered and made homes and extensive improvements; and
>
> Whereas said lands referred to are to a very small extent, if any, timber lands; but, on the contrary, have been and can be cultivated: Therefore,
>
> *Be it resolved*, That a committee consisting of three Senators be appointed to investigate the matter of the reservation of said lands and report to the Senate what action ought to be taken to protect the rights of any bona fide settlers who may be included in said reservation;
>
> That said committee be authorized to sit during the recess, to send for persons and papers, and do all things necessary to a full investigation of the merits of the case;
>
> That the necessary expenses incurred in this investigation shall be paid out of the contingent fund of the United States Senate;
>
> That the said committee shall make a full report at the second session of the Fifty-second Congress.

having visited the lands, and having taken evidence, as required by law, would respectfully make the following report:

It appears that on October 1, 1890, an act was passed withdrawing from settlement certain lands in the counties of Mariposa and Tulare, Cal., and setting said lands apart as the Yosemite and Sequoia national parks.

The following is the act of 1890:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the tracts of land in the State of California known and described as follows: Commencing at the northwest corner of township two north, range nineteen east, Mount Diablo meridian, thence eastwardly on the line between townships two and three north, ranges twenty-four and twenty-five east; thence southwardly on the line between ranges twenty-four and twenty-five east to Mount Diablo base line; thence eastwardly on said base line to the corner to township one south, ranges twenty-five and twenty-six east; thence southwardly on the line between ranges twenty-five and twenty-six east to the southeast corner of township two south, range twenty-five east; thence eastwardly on the line between townships two and three south, range twenty-six east, to the corner to townships two and three south, ranges twenty-six and twenty-seven east; thence southwardly on the line between ranges twenty-six and twenty-seven east to the first standard parallel south; thence westwardly on the first standard parallel south to the southwest corner of township four south, range nineteen east; thence northwardly on the line between ranges eighteen and nineteen east to the northwest corner of township two south, range nineteen east; thence westwardly on the line between townships one and two south to the southwest corner of township one south, range nineteen east; thence northwardly on the line between ranges eighteen and nineteen east to the northwest corner of township two north, range nineteen east, the place of beginning,

> are hereby reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and set apart as reserved forest lands; and all persons who shall locate or settle upon, or occupy the same or any part thereof, except as hereinafter provided, shall be considered trespassers and removed therefrom: *Provided, however,* That nothing in this act shall be construed as in anywise affecting the grant of lands made to the State of California by virtue of the act entitled "An act authorizing a grant to the State of California of the Yosemite Valley, and of the land embracing the Mariposa Big Tree Grove, approved June thirtieth, eighteen hundred and sixty-four; or as affecting any bona fide entry of land made within the limits above described under any law of the United States prior to the approval of this act."
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> SEC. 2. That said reservation shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be, as soon as practicable, to make and publish such rules and regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation from injury of all timber, mineral deposits, natural curiosities, or wonders within said reservation, and their retention in their natural condition. The Secretary may, in his discretion, grant leases for building purposes for terms not exceeding ten years of small parcels of ground not exceeding five acres, at such places in said reservation as shall require the erection of buildings for the accommodation of visitors; all of the proceeds of said leases and other revenues that may be derived from any source connected with said reservation to be expended under his direction in the management of the same and the construction of roads and paths therein. He shall provide against the wanton destruction of the fish and game found within said reservation, and against their capture and destruction for the purposes of merchandise or profit. He shall also cause all persons trespassing upon the same after the passage of this act to be removed therefrom, and generally, shall be authorized to take all such measures as shall be necessary or proper to fully carry out the objects and purposes of this act.
>
> SEC. 3. That there shall also be, and is hereby, reserved and withdrawn from settlement, occupancy, or sale, under the laws of the United States, and shall be set apart as reserved forest lands, as hereinbefore provided, and subject to all the limitations and provisions herein contained, the following additional lands, to wit: Township seventeen south, range thirty east of the Mount Diablo meridian, excepting sections thirty-one, thirty-two, thirty-three, and thirty-four of said township, included in a previous bill; and there is also reserved and withdrawn from settlement, occupancy, or sale, under the laws of the United States, and set apart as forest lands, subject to like limitations, conditions, and provisions, all of townships fifteen and sixteen south, of range twenty-nine and thirty east of the Mount Diablo meridian; and there is also hereby reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and set apart as reserved forest lands under like limitations, restrictions, and provisions, sections five and six in township fourteen south, range twenty-eight east of Mount Diablo meridian, and also sections thirty-one and thirty-two of township thirteen south, range twenty-eight east of the same meridian. Nothing in this act shall authorize rules or contracts touching the protections and improvement of said reservations beyond the sums that may be received by the Secretary of the Interior under the foregoing provisions, or authorize any charge against the Treasury of the United States.

It appears further, that under previous timber acts of Congress, many settlers had gone upon the lands so withdrawn and had either made final proof and received patents, or had made filings in good faith and had added many valuable improvements.

Many of these lands subsequent to the withdrawal, were rendered almost valueless, as by orders, settlers were not granted privileges of ingress and egress. Other settlers who had complied with the law in making filings and had with much time and labor made valuable improvements, were not allowed by the Government to make final proof, and were ordered to vacate the lands.

Your committee sat at Fresno and Los Angeles, Cal., and took evidence in the case, with the following findings:

That, so far as the Yosemite National Park (situate in Mariposa County and embracing townships 1 and 2 north of ranges 19, 20, 21, 22, 23, and 24 east, Mount Diablo meridian; townships 1, 2, 3, and 4 south of ranges 19, 20, 21, 22, 23, 24, and 25 east, Mount Diablo meridian; townships 3 and 4 south of range 26 east, Mount Diablo meridian) is concerned, the lands are only good for the timber that is on them and for the pasturage of cattle, and the evidence taken by your committee shows that a great many who have patents to lands within said park and have lived there for a number of years are, in view of the orders of the Interior Department, not allowed to build roads to their lands, and hence are prevented ingress and egress to the same, which virtually deprives them of the full use and enjoyment thereof.

In this connection we refer to the statement furnished by P. Y. Baker, one of the witnesses appearing before your committee, which is as follows:

I have the honor to represent the parties whose names are subjoined being owners of patented lands within the limits of the Yosemite National Park, and who desire to have townships 1 and 2 north and townships 1, 2, 3, and 4 south, ranges 19 and 20 east of Mount Diablo base and meridian, excluded from said park, and beg to represent that all the lands of any commercial or agricultural value within the limits of the townships herein set forth were in the hands of private owners at the time of the extension of the boundaries of said park.

The names of owners and numbers of the land represented by me are as follows, viz:

Name.	Subdivision.	Section.	Township.	Range.
W. T. Hall	SW. ¼	20	2 S.	20 E.
J. H. Melone	SE. ¼	20	2 S.	20 E.
L. E. Hall	SE. ¼	30	2 S.	20 E.
D. Finn	SW. ¼	30	2 S.	20 E.
E. Weisbaum	NE. ¼	30	2 S.	20 E.
B. C. Mickle	NW. ¼	17	2 S.	20 E.
C. B. King	NW. ¼	30	2 S.	20 E.
H. T. Hendricks	SW. ¼	19	2 S.	20 E.
Mrs. A. Peck	E. ½ and SW. ¼ of NE. ¼	22	1 S.	19 E.
	SW. ¼ of NW. ¼	23		
Emma I. Peck	NE. ¼ of SE. ¼	8	1 S.	20 E.
	W. ½ of SW. ¼	9		
	NE. ¼ of SW. ¼	9		
Jessie A. Peck	E. ½ of SE. ¼ and SE. ¼ of NE. ¼	9	1 S.	20 E.
	SW. ¼ of NW. ¼	10		
Martha L. Rowland	SE. ¼	26	2 S.	19 E.
R. R. Rowland	NW. ¼	26	2 S.	19 E.
J. S. Moulton	NW. ¼	19	2 S.	20 E.
H. Robison	S. ½ of NE. ¼ and SE. ¼ of NW. ¼ and NW. ¼ of SE. ¼.	20	1 S.	20 E.
Mrs. H. Robison	SE. ¼ of NW. ¼ and NE. ¼ of SW. ¼ and SW. ¼ of NE. ¼ NW. ¼ of SE. ¼.	33	1 S.	20 E.
J. L. Gozzolo	SW. ¼	24	2 S.	19 E.
Susie Atkinson	S. ½ of NW. ¼ and W. ½ of NE. ¼	9	1 S.	20 E.
Gussie E. Burgess	S. ½ of NE. ¼, SE. of NW. ¼, and NW. ¼ of SE. ¼	15	1 S.	19 E.
J. N. Agee	N. ½ of NE. ¼	12	1 S.	19 E.
	S. ½ of SE. ¼	1		
A. P. Baker	SE. ¼	17	2 S.	19 E.
O. B. Gleason	SE. ¼	18	2 S.	19 E.
L. M. Ehat	NE. ¼	24	2 S.	19 E.
T. V. Dewey	NE. ¼	31	2 S.	20 E.
E. Seligman	Lot 4	3	1 S.	20 E.
	W. ½ of SW. ¼ and	34	1 N.	20 E.
	NE. ¼ of SE. ¼	33	1 N.	20 E.
Mrs. P. Crow	E. ½ of SE. ¼	20	1 S.	20 E.
	W. ½ of SW. ¼	21		
A. Bowhay	NW. ¼	12	1 S.	19 E.
L. Easterhous	N. ½ of SW. ¼ and NW. ¼ of SE. ¼	4	1 S.	20 E.
	NE. ¼ of SE. ¼	5		
Mrs. C. Earl	SW. ¼ of NW. ¼ and N. ½ of SW. ¼	20	1 S.	20 E.
	SE. ¼ of NE. ¼	19		
G. F. Chisolm	S. ½ of SE. ¼ and SW. ¼ of SE. ¼ and	19	1 S.	20 E.
	SW. ¼ of SW. ¼	20		
C. J. Weaver	NW. ¼	29	2 S.	20 E.
M. A. Weaver	NE. ¼	29	2 S.	20 E.
Rosa Jones	SE. ¼ of SW. ¼ and SW. ¼ of SE. ¼	20	1 S.	20 E.
	N. ½ of NE. ¼	29		
Wm. Stobie	E. ½ of W. ½	35	2 S.	19 E.
N. F. Miles	NW. ¼	21	2 S.	20 E.
J. R. McKenna	SE. ¼	35	2 S.	19
Louis Decker	NE. ¼	35	2 S.	19
R. E. McKenna	SW. ¼	18	2 S.	20
S. C. VanValer	SW. ¼	17	2 S.	19
W. L. Lowery	SW. ¼ of SE. ¼	28	1 N.	20 E.
	NW. ¼ of NE. ¼ and N. ½ of NW. ¼	33	1 N.	20 E.

Name.	Subdivision.	Section.	Township.	Range.
Lee Lowery	SE. ¼ of SE. ¼	28	1 N.	20 E.
	E. ½ of NE. ¼ and SW. ¼ of NE. ¼	33		
G. D. Smith	Lot 4 and SW. ¼ of NW. ¼	5	1 S.	20 E.
	Lot 1 and SE. ¼ of NE. ¼	6		
M. N. Lowery	E. ½ of NE. ¼	21	1 S.	19 E.
	S. ½ of NW. ¼	22		
A. E. Lowery	NE. ¼ of NW. ¼, N. ½ of NE. ¼, SE. ¼ of NE. ¼	34	1 N.	20 E.
J. H. Demaree	S. ½ of SE. ¼, SE. ¼ of SW. ¼	34	1 N.	20 E.
	Lot 3	3	1 S.	20 E.
J. E. Lowery	E. ½ of SW. ¼ and W. ½ of SE. ¼	27	1 N.	20 E.
M. E. Demaree	SW. ¼ of NW. ¼, W. ½ of SW. ¼	35	1 N.	20 E.
	NE. ¼ of SE. ¼	34		
Lee Lowery	SE. ¼ of SE. ¼	28	1 N.	20 E.
	E. ½ of NE. ¼	33		
	SW. ¼ of NW. ¼	34		
E. E. Lowery	E. ½ of SE. ¼	17	1 S.	19 E.
	NE. ¼ of NE. ¼	20		
	NW. ¼ of NE. ¼	21		
R. S. Demaree	Lot 2 and SW. ¼ of NE. ¼ and SE. ¼ of NW. ¼ and Lot 5.	6	1 S.	20 E.
L. J. Peck	Lot 4	7	1 S.	20 E.
	S. ½ of SE. ¼	13		
	NE. ¼ of NE. ¼	18		
R. L. Roughton	NE. ¼	17	2 S.	20 E.
Henrietta Carville	S. ½ of SW. ¼	12	1 S.	19 E.
	N. ½ of NW. ¼	13		

I am informed, and the records of the land office at Stockton, Cal., shows, that there is a great amount of land within the boundaries set forth above that should be either purchased by the Government or excluded from said park in addition to those herein represented. We are taxed by the State and county and can not use our own property.

It is estimated that about two hundred settlers who have patents to their land have been deprived of the full use and enjoyment thereof, in the manner above stated.

Concerning the Sequoia National Park (located in the county of Tulare, State of California, embracing townships 15 and 16 south of range 29 east, Mount Diablo meridian, and townships 15, 16, 17, and 18 south of range 30 east, Mount Diablo meridian, and township 18 south of range 31 east, Mount Diablo meridian), your committee beg leave to refer particularly to what is known as the Keweah Coöperative Colony settlers, and in this connection beg leave to refer to the testimony and exhibits of Henry C. Dillon, district attorney elect of Los Angeles County and the attorney of the Keweah Coöperative Colony Company.

Mr. Dillon's testimony is corroborated fully by the testimony of the secretary of said colony, Mr. James John Martin, a witness before your committee.

LOS ANGELES, CAL., *November 16, 1892.*

TESTIMONY OF HENRY C. DILLON.

HENRY C. DILLON, sworn and examined.

By Senator KYLE:

Q. Mr. Dillon, please state your name and occupation.—A. Henry C. Dillon, attorney at law, district attorney elect of Los Angeles County, and am and have been the attorney of the Keweah Coöperative Colony Company, Limited, of California, a joint stock company, during the last three years.

Q. We would like to know, Mr. Dillon, in a direct way, what you know about the first settlement of people in what is known as the Sequoia Park. That is, we will not call them the Keweah Colony settlers, but you can give when it became settled; about the method of entry and under what law, whether these parties complied with the law, whether they were dispossessed of their lands, and, in your judgment, whether damages are due them, and further than that, something of the character of the lands and the park in general.—A. Prior to the month of October, 1885, a number of gentlemen were associated together in the city of San Francisco, who had for their object the acquirement of a piece or tract of land upon which they might settle as a community for the purpose of forming there a coöperative community. They employed an agent and after various reports concerning agricultural, mineral, and other lands, they finally adopted his report upon a tract of timber land in Tulare County, being the same lands commonly known as "colony lands" in Townships 15, 16, 17, and 18 south, range 28, 29, 30, and 31 east, Mount Diablo meridian, referred to on pages 14 and 15 of the pamphlet entitled, "The Persecution of Keweah."

Between the 5th and 13th days of October, 1885, forty-three members of this association proceeded to Visalia, the county seat of Tulare County, and in the local United States land offices there filed upon the said land. The names of these filers and the particular land upon which they filed, will accompany my testimony and be handed in later.

These filings were made in pursuance to the timber act of June 3, 1878. The publication notices were made in each case, the affidavits required by law were made, and finally, after the completion of the publication, the purchase money was tendered by each one of these filers, together with the fees of the land office, in United States gold coin.

I tender, herewith, the certificate of the register and receiver of the Visalia land office, showing full compliance with the law and the tender of this money on the part of said filers.*

Before the publications were fully completed and on the 2d of December, 1885, Commissioner W. A. J. Sparks, then Commissioner of the General Land Office, telegraphed to the register and receiver of the Visalia land office to suspend the further entry of said lands, and subsequently a letter from the Commissioner was received to the same effect.

Q. May I ask why it was that he sent this telegram to suspend this land from entry, in your judgment?—A. The letter of the Secretary shows that the suspension was made because it was suspected from the fact that so many persons filed upon these lands, on or about the same time, that they were merely dummies for some corporation and it was suspected that fraud was being committed upon the Government, and that the filings were not made in good faith. In other words, the suspension was on account of suspected fraud on the part of filers. Because of this telegram and letter the local land officers refused the tender of the money, and from this order of the local land office the filers appealed to the General Land Office at Washington. I need not say anything as to what occurred on appeal, as that is a matter of record. I am personally acquainted with these filers, or nearly all of them, and with the settlement which they made adjacent to these lands, and with the work which they did in attempting to make the timber lands accessible.

I know that they were not acting as dummies for any lumber company, and that the only object that they had was to acquire a piece of timber land so that they might have lumber for building their homes, making other necessary improvements, and in the erection of mills and manufactories, where they might work the timber into lumber products and sell them in the markets for the benefit of the community.

I have been the attorney of the Keweah Colony for three years, and have defended all of the suits, that have been brought against the individual members and officers of that colony, during that period. The testimony which I am giving is based upon my investigation of their affairs and the investigation of the records of the land office at Visalia, from personal knowledge acquired on the grounds and in traveling over these timber lands. I know that immediately after filing upon these lands, these forty-three filers and their new associates who had become members of the Keweah Colony began the building of a wagon road into the timber lands.

Before that time the timber was considered inaccessible—the San Joaquin Lumber Company's engineer had reported that the timber lands were inaccessible, before these lands were filed upon, as above stated. Nevertheless, these men went to work and built the wagon road, blasting it through granite cliffs a distance of 22 miles and at a cost, which my investigation leads me to say, was not less than $100,000 and has been estimated as high as $150,000.

The building of this wagon road during the pendency of their appeal in the General Land Office shows that the men were acting in the utmost good faith. It is plain to be seen that they put themselves entirely at the mercy of the Government. They spent their money and expended their time and labor, not knowing whether they would ever get the patents or not. They built two towns at the same time, called Keweah and Advance. The town of Keweah is still in existence and some twelve families are still residing there as the small remnant of the 500 persons who originally composed the colony.

The actions brought by the Government were as follows: First, criminal actions against the members of the board of trustees of the colony for cutting timber upon

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* See Exhibit No. 1.

Government lands. The evidence shows in the first case that the timber was cut upon a piece of Government land upon which one John Zolriot had only a squatter's claim, which claim was made after the telegram of December 2, 1885, and the court, I think, properly instructed the jury to find the verdict of guilty in that case. The defendants were fined $100 apiece, and inasmuch as an appeal could only be procured where the fine amounts to over $300, at the request of the defendants, the judge changed the fine to $301 in each case, and the cases are now pending upon writ of error in the United States court of appeals undetermined.

In the other case, where the timber was cut upon one of the quarter sections filed upon by one of the defendants, the United States attorney entered a nolle prosequi, so that the defendants were never given an opportunity to try their rights to cut timber upon land which they had actually filed and which involves the equities of their filings. Immediately thereafter the United States began action in equity against the said filers, praying for an injunction restraining them from cutting timber upon Government lands; these actions covered each of the forty-three filings above mentioned. The defendants answered and also filed a crossbill in each action, setting up their filings, their compliance with the law, that is to say, with the act of June 3, 1878, tender of the money, the refusal to receive it, the appeal of the Land Office and, in a word, claimed that by virtue of their compliance with the law and the tender of the money, had acquired vested rights in the land and prayed that the complainant (the United States) be decreed to issue a patent for the said land.

LOS ANGELES, CAL., *November 17, 1892.*

EXAMINATION OF THE WITNESS—Continued.

The WITNESS (Mr. Dillon). I herewith tender a transcript of the case of James John Martin, appellant against the United States of America, transcript of appeal certified by the clerk of the United States circuit court for the southern district of California, as a correct transcript of the bill of complaint, the answer of the defendant, the crossbill, and the final decree of the court in each of the said cases, all of them being of the same tenor. This transcript will give a correct history of the equity cases.* I also offer in connection with the same, the brief which I filed in support of the cases made by the defendants in their crossbills.†

The cases were tried upon demurrer of the United States to the crossbill. This demurrer admitted on the part of the Government the truth of all the facts stated in the crossbill, thus rendering it unnecessary to take any evidence. So that the record here presented contains the admitted facts of the case, as between the timber filers and the Government.

This decision of the United States circuit court, together with the acts of Congress of September 25 and October 1, 1890 (26 Statutes at Large, 478-650), have effectually and finally dispossessed these colonists and timber filers of all the interest they had in these lands, and there remains nothing for them, unless Congress will either repeal said acts, so far as these claimants are concerned, or indemnify them for the value of their improvements made in anticipation of a patent. As to that, I have this to say: The settlers acted in the utmost good faith towards the Government in making their filings. They did more than was customary by purchasers of similar lands and filers upon similar lands, because they immediately settled in the vicinity of the lands, taking their families with them. They built two towns, as I have before stated, and built the wagon road into the timber land a distance of at least 20 miles.

I wish to say further, in regard to these timber filers and those who afterwards became associated with them under the name of the Keweah Colony Company of California, limited, a joint stock company, that it was not a corporation, but it was a partnership, having articles of association, fully set forth, together with their by-laws, in the November number of the Commonwealth, 1889.

It was not a scheme for cutting down the timber and converting it into lumber in the shortest possible space of time and converting it into cash, as is usually done by the lumber companies which have succeeded in getting possession of Government lands heretofore, but was a scheme to establish homes upon the public domain, to be supported by the manufactured product of the timber.

Adjacent to this timber land upon which they had filed, and at the valley end of the wagon road which I have mentioned, were the towns of "Advance" and "Keweah," built upon agricultural lands which they had purchased.

It was at these two points, especially at Keweah, that they intended to establish their manufactories and in the course of time to use the bed of the wagon road as a railroad, also to use the enormous water power of the Keweah River to generate electricity.

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* See Exhibit No. 2.

† See Exhibit No. 3.

In the same connection they had acquired water rights; also had made mineral locations upon marble quarries, which were to be worked into the finished product.

My acquaintance with these men has convinced me that they were not dreamers only, but they were workers in every sense of the word.

The building of the wagon road was a stupendous undertaking; such road beds, when built by engineers for railroad purposes, are known to cost $30,000 per mile. The greater part of this wagon road is built through granite cliffs, which had to be blasted down. None but the most intrepid pioneers ever engaged in work of this kind. Such men as these are the most valuable citizens that our country possesses. The only thing that can be said against them is that they were bringing down the price of lumber in the San Joaquin Valley.

These lumber companies, interested in keeping up the price of lumber and knowing what these colonists there were doing, stood by and allowed them to go on for six years in the building of this wagon road and in the expenditure of $100,000, and took no action until after the road was completed and they had begun to cut lumber; then a timber agent of the Government was brought in there to protest against what they were doing for the first time, and then, and not until then, the actions were begun which I have just related.

Q. May I ask, Mr. Dillon, is it the judgment of the colonists and yourself that this United States timber agent was sent there at the instigation of the lumber companies?—A. That is my belief.

The WITNESS (continuing). With regard to the honesty and the good faith of the common scheme of coöperation to which I have referred I now call attention to the cases commonly known as the post-office cases, brought against the trustees of the colony for concocting a scheme to defraud the public and the use of the United States mails for carrying it into effect. I offer herewith a copy of the indictment in the case which was tried;* there were three cases in all; the first one sets up the scheme of coöperation, substantially as it is set forth in the November Commonwealth, and claims that it was the intent of the promoters of this scheme to obtain membership fees to convert the money to their own use.

The case therefore involved the bona fides of the entire scheme of coöperation and also involved the accounts which they had kept, and the receipt and expenditure of all sums of money received from members—from every source.

Q. When was this tried?—A. The case came on for trial in May, 1892. Something over thirty witnesses were subpœnaed on behalf of the Government, and after examination of six witnesses before the jury, the case on the part of the Government broke down and the United States attorney stated to the court that the balance of testimony was simply cumulative of what had already been introduced, and thereupon I, as counsel for the defendants, moved the court to direct the jury to acquit the defendants, which was accordingly done.

Miss F. J. McClary was the stenographer of that trial and I shall call her for the purpose of testifying as to what was said by United States Attorney Allen, myself, and the court upon that trial.

The other cases involving substantially the same questions were nolle prossed by the United States attorney and that ends all the litigation which had been going on between the Government and these colonists. Their good faith in every stage of the proceedings has been satisfactorily shown to the court.

Q. These cases were tried in what court?—A. These cases were tried before Judge Ross, in the United States district court for the southern district of California, sitting at Los Angeles.

The WITNESS (continuing). Further, in regard to the good faith of the filers upon these lands, I offer in evidence the opinion of Hon. Lewis A. Groff, Commissioner of the General Land Office, rendered on the 25th of February, 1891, after an exhaustive examination made by him into the facts of the case.†

In the same connection I refer to the report made by United States Timber Agent B. F. Allen, in 1889, now on file in the office of the Commissioner of the General Land Office at Washington (under letter "P"), and also to the report of J. D. Hyde, register, and Tipton Lindsey, receiver of the United States land office at Visalia, Tulare County, Cal., which concludes with these words: "That we are of the opinion that said entries were made in good faith, and that the same should be allowed."

I herewith offer a true copy of the original now on file at the United States Land Office at Washington. This certificate contains the names of the forty-three filers and a correct description of all the lands filed upon, together with the proceedings had in the local land office subsequent thereto.‡

I also offer a pamphlet, published by the Keweah Colony, as a correct statement of their case with the Government, with respect to these lands, entitled "The Persecution of Kaweah."*

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*See Exhibit No. 4. †See Exhibit No. 5. ‡See Exhibit No. 6.

Also a certified copy of the application of Burnette G. Haskell to purchase certain timber lands under the act of June 3, 1878, as the correct exemplification of the steps taken and the acts performed in the United States land office at Visalia and upon appeal to the United States General Land Office at Washington, in each of the forty-three cases—all of the other proceedings and appeals being of the same tenor.†

There were sixty-five filings made substantially at the same time that these forty-three filings were made, and they were all lumped together by the Government in sixty-five equity cases, brought at the same time as the equity cases which I have heretofore mentioned, and were all settled by the Government in the same way—that is, decided adversely to the filers.

With respect to the good faith, good citizenship, honesty, and integrity of the members of the Keweah Colony, who were interested in these lands, I offer in evidence a petition to the Senate and the House of Representatives of the United States, signed by the mayor of Visalia, all of the members of the board of supervisors, the superior judges, and all of the county officers of Tulare County, together with the leading citizens of Visalia who lived nearest to these men and knew most about them. This (referring to the petition) is original, and the signatures are original.‡

In this petition I call particular attention to the letter of B. F. Allen, United States timber agent and inspector, dated March 13, 1890. With respect to the colonists being socialists, anarchists, nationalists, or disciples of Edward Bellamy, seems to me wholly irrelevant as to whether those charges are true or not. It seems to me that, so far as this controversy is concerned, it would be just as relevant to inquire whether they are Methodists, Baptists, or Episcopalians.

I have for years been personally acquainted with these people, have visited them in their homes upon their timber lands and thoroughly acquainted myself with them and their affairs and I am unable to say at this time just what their religion, their philosophy, or politics are. I have always found them hard working, industrious, sober, peaceful, and law-abiding citizens, and that being the case, all inquiry as to their religion seems to me should be irrelevant. They have been trying in good faith to carry out a scheme of coöperation, by which the labor of one man might be exchanged equitably for the labor of another—that is all there is in it. My belief is that if their scheme had not been interrupted and their labor stopped by the action of the Government, they would have established a community and been valuable tax-paying citizens of Tulare County, in a part of that county which before that time was wholly inaccessible and of no value whatever. They were pioneers opening up a new country and added to the worth of their county and State in the same manner that all other good citizens do.

In regard to the action of Capt. J. H. Dorst, U. S. Army, acting superintendent of the Sequoia Park, I have to say that the timber lands had been thoroughly protected by the colonists themselves before he came there. There are repeated instances of the women and the children, as well as the men, turning out to fight forest fires in order to protect the timber lands. It was also a regulation of the colony that none of the giant trees were to be cut, but they were to be preserved; besides that, it is a well known fact that the *Sequoia gigantea* is never cut for lumber; its own size is its best protection. Such trees have been cut, as I am informed, in other parts of the mountains and split by blasting, but the work proved to be unproductive; none of this has ever been done by these colonists. The yellow pine and the Sequoia pine were the only trees cut for lumber.

I have examined this timber land personally, and have been the secretary of the Los Angeles Highway and Forestry Association, and have been interested in the scientific discussions concerning the watersheds and forest culture for many years. My own opinion is that the watersheds can be successfully preserved by allowing the trees of certain size, say the older trees, to be cut, by cutting lumber under proper supervision. The people living in the valley of this State, as well as the people inhabiting the mountains, must have lumber, and they should be permitted to take it from the adjacent mountains, but they should be required to take it in such a manner as not to interfere with the growth of the timber and the preservation of the watersheds. Under proper superintendents the young trees can be preserved and would preserve the watersheds; that is to say, they hold the falling snows during the winter and take the place of the old trees so as to keep up a continual supply of lumber.

Q. I would like to ask you, Mr. Dillon, do you, by instruction or otherwise, represent before this committee these forty-three filers?—A. Yes, sir. I represent these filers by powers of attorney in writing and by resolutions in writing of the board of trustees of the Keweah Colony, a certified copy of which I offer in evidence.

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*See Exhibit No. 7.

†See Exhibit No. 8.

‡See Exhibit No. 9.

Q. In case it was thought best, by act of Congress or otherwise, to indemnify these settlers or these colonists for their loss sustained, what, in your judgment, would be a satisfaction of their claims?—A. It should be the value of the wagon road, the value of their townsites, and the buildings and the other improvements put thereon, together with the damages which they have sustained by reason of the failure of the Government to comply with the contract on its part for the purchase and sale of this timber land. Many of these colonists came great distances and gave up valuable positions as well as their homes in anticipation of their being able to acquire titles to these lands and in the belief that the Government would not interfere in their efforts to purchase the same.

The damage from the loss of the wagon road is $140,000. The earnings of the resident members (who averaged 100) from October, 1885, to May, 1892, when the colony dispersed, and their average would have been $600 per year, making $360,000 for the six years. The value of their improvements, machinery, exclusive of the wagon road, which have become valueless by reason of the loss of these lands, is not less than $30,000, excluding in my estimate such parts of the property as was movable without loss, as, for instance, live stock and wagons. The foregoing represents the actual damage sustained.

Another way of getting at the same thing is to consider the value of the timber land in the market at the present time, if the filers had Uunited States patents to it; that the body of land, together with the wagon road leading to it, is reasonably worth $350,000. I think that any lumber company would be glad to buy the wagon road and that body of timber land for that amount of money. It would be a good investment at that price.

Q. In case these colonists were sustained by the United States Government in their rights, would many of the members of the Keweah Colony now absent return?—A. If the land should be granted to the original filers by United States patents, I am satisfied that nearly all of them would return. A few of the filers have died—three have died—but their heirs would undoubtedly return. That it is more correct to say, that if these men had not been interfered with by the Government, if they had been allowed to carry out their original scheme of coöperation, they would be there still, but now that the colony has been broken up by this action of the Government, the men have scattered, being compelled to do so in order to gain a livelihood. Therefore it is impossible to say whether they would return in case the Government should issue patents for these lands. I know of a great many who are anxious to return and carry out this original plan of coöperation. Under a proper plan of organization I am sure that nearly all of the colonists would be glad to return and renew their attempts to carry out any feasible plan of coöperation. It was found in actual practice that many of their plans were impracticable, but they have learned by experience how to adopt practical and feasible plans, and that although this particular plan of coöperation has failed under the circumstances, yet they are all convinced that the idea of coöperation is practical and feasible, and they are still anxious to carry it into effect and would do so if the Government would give them the proper opportunity.

Exhibit No 1.

Certificates of register and receiver and claim of title.

No. 174.] LAND OFFICE AT VISALIA, CAL., *December 30, 1885.*

I, Burnette G. Haskell, of San Francisco County, State of California, do hereby apply to purchase under the act of June 3, 1878, the SW. ¼ of section two in township sixteen south of range twenty-nine east containing 160 acres, according to the returns of the surveyor-general, for which I have agreed with the register to give at the rate of two and one-half dollars per acre.

BURNETTE G. HASKELL.

I, J. D. Hyde, register of the land office at Visalia, Cal., do hereby certify that the lot above described contains 160 acres, as mentioned above, and that the price thereof as timber land is $2.50 per acre. But I decline to sell the same on account of telegram from the Hon. Commissioner of the General Land Office, dated Dec. 2, 1885.

J. D. HYDE, *Register.*

Witness:
BURNETTE G. HASKELL.

LAND OFFICE, VISALIA, CAL., *December 30, 1885.*

Burnette G. Haskell this day tendered me the sum of $410, being the price of the land within described, and the $10 fee required by the act of June 3, 1878, and I refuse to receive the same on account of the certificate of the register on reverse side hereof.

TIPTON LINDSEY,
Receiver.

Witness:
BURNETTE G. HASKELL.

STATE OF CALIFORNIA, *County of Tulare, ss.:*

Before me this day personally appeared Burnette G. Haskell, known to me to be the same person whose name is subscribed to the above certificates as a witness thereto, who being by me duly sworn, deposed and said: that he was present and saw J. D. Hyde, register, and Tipton Lindsey, receiver, as aforesaid, personally known to him to be the same persons described in and whose names are subscribed to the foregoing certificates as parties thereto sign and deliver the same to claimant named; and further, that affiant has personally examined and inspected all of the papers on file in said land office in this matter and knows the facts in the case; that said claimant has fully complied with all of the provisions of the act of Congress approved June 3, 1878, as shown by said record, and is entitled to the possession of said land.

In witness whereof, I have hereunto set my hand and affixed my official seal at the city of Visalia, county of Tulare, this 25th day of January, 1886.

[SEAL.]

W. F. THOMAS,
Recorder.

To whom it may concern, greeting:

Know all men by these presents, That under and by virtue of the acts done and performed by me in the premises, the certificates foregoing whereof are evidence, and under and by virtue of my actual taking of possession thereof this day, and because of my having strictly complied with all of the provisions of the law in such case made and provided, and by virtue of my holding the said sum of $410 heretofore tendered subject to the order of the proper authority, I, Burnette G. Haskell, the claimant named in the foregoing certificate, am now the owner of and entitled to the possession thereof of the following described piece of property, to wit: The southwest quarter of section two, township sixteen south of range twenty-nine, East Mount Diablo meridian, situate, lying and being in the county of Tulare, State of California, and containing one hundred and sixty acres, more or less.

And further know that I have this day taken actual possession thereof and hold the same adversely against all men and the world.

In witness whereof I have hereunto set my hand and seal this 20th day of January, A. D. 1886.

[SEAL.]

BURNETTE G. HASKELL.

Signed and sealed in the presence of—

——— ———.

STATE OF CALIFORNIA, *County of Tulare, ss:*

On this twenty-fifth day of January, one thousand eight hundred and eighty-six before me, W. F. Thomas, county recorder in and for said county of Tulare, personally appeared Burnette G. Haskell, personally known to me to be the same person described in, whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[SEAL.]

W. F. THOMAS,
County Recorder.

(Indorsed:) The United States to Burnette G. Haskell, certificates of register and receiver and claim of title. Recorded at request of Burnette G. Haskell at 10 min. past 3 p. m., January 25th, 1886, in Vol. "E" of assignments, etc., page 479 et. seq., records of Tulare County, Cal. W. F. Thomas, county recorder.

CLAIM OF TITLE.

To whom it may concern, greeting:

Know all men by these presents: That under and by virtue of the acts done and performed by me in the premises, the certificates foregoing whereof are evidence, and under and by virtue of my actual taking of possession thereof this day and because of my having strictly complied with all of the provisions of the law in such cases made and provided, and by virtue of my holding the said sum of $410 heretofore tendered subject to the order of the proper authority, I ——— ———, the claimant named in the foregoing certificate and now the owner of and entitled to the possession thereof of the following described piece of property, to wit, the ——— of section ———, township ——— south, of range ———, east Mount Diablo meridian; situate, lying and being in the county of Tulare, State of California, and containing one hundred and sixty acres more or less.

And further know that I have this day taken actual possession thereof and hold the same adversely against all men and the world.

In witness whereof, I have hereunto set my hand and seal this ——— day of January, A. D. 1886.

[SEAL.] ——— ———.

Signed and sealed in the presence of—

——— ———.

EXHIBIT No. 2.

[United States circuit court of appeals for the ninth circuit, October term, 1891.]

JAMES JOHN MARTIN, APPELLANT, vs. THE UNITED STATES OF AMERICA.

Appeal from the circuit court of the United States for the Southern District of California.

In the circuit court of the United States, ninth circuit, southern district of California.—The United States of America, complainant, *vs.* James John Martin, defendant.

BILL IN EQUITY.

To the judges of the circuit court of the United States
for the Southern District of California:

The United States of America, by the Attorney-General thereof, brings this its bill against James John Martin, and thereupon your orator complains and says:

That on the 30th day of May, A. D. 1848, under and by virtue of the treaty of Guadalupe Hidalgo, the United States of America acquired from Mexico the lands hereinafter described, situate and being in the county of Tulare, State of California, and the said United States of America then was and ever since has been and now is the absolute and unqualified owner thereof, by title in fee simple and entitled to and in possession thereof.

That the whole of said lands, and every part thereof, on said date were, ever since have been, and now are public lands of the United States, timbered lands and not mineral, said lands being described according to the United States Government survey thereof, which have been made as follows, to wit:

Southeast one-quarter (SE. $\frac{1}{4}$) of section six (6), township sixteen (16) south, range thirty (30) east, Mount Diablo base and meridian.

Your orator further shows unto this honorable court and avers that there is a large quantity of timber, trees and wood, growing and being upon said lands; that defendant has threatened, is threatening, and intends to and unless restrained by this honorable court will wrongfully and unlawfully chop down the said timber, trees, and wood, and remove the same and cause the same to be removed from said lands to the great and irreparable injury of complainant.

Your orator further shows that the amount in controversy exceeds the sum or value of $5,000.00, exclusive of interest and costs.

In tender consideration whereof and forasmuch as the complainant is remediless at and by the strict rules of the common law, and can only be relieved in a court of equity, your orator prays that the defendants, his agents, servants, and employés be enjoined from cutting any tree, timber, or wood upon said lands, and from in any way injuring the trees growing thereon, and from removing or causing to be removed any wood or timber now cut thereon, and for such other and further relief as the court may deem equitable in the premises.

May it please your honors to grant unto your orator a writ of injunction issuing out of and under the seal of this honorable court, directed to the said defendant, James John Martin, enjoining him, his agents, servants, and employés from cutting any tree, timber, or wood upon said lands, and from in any way injuring the trees growing thereon, and from removing or causing to be removed any wood or timber now cut thereon.

May it please your honors to grant unto your orator a writ of subpœna issuing out of and under the seal of this honorable court to be directed to the said defendant, James John Martin, commanding him, on a certain day and under a certain penalty therein to be inserted, to be and appear before your honors, and then and there answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience, and your orator will ever pray.

Your orator waives answer under oath.

W. H. H. MILLER,
Atty. Gen. of the United States of America, on behalf of the United States, Solicitor.
WILLOUGHBY COLE,
United States Attorney, Southern District of California, of Counsel.

(Endorsed.) No. 238. U. S. circuit court, ninth circuit, southern district of California. United States of America, complainant, *vs.* James John Martin, defendant. Bill of complaint in equity. Filed March 26th, 1891. Wm. M. Van Dyke, clerk; Hon. W. H. H. Miller, Atty. General; Willoughby Cole, U. S. attorney.

United States of America, circuit court of the United States, ninth circuit, southern district of California. In equity.

SUBPŒNA.

The President of the United States of America, greeting: To James John Martin:

You are hereby commanded, that you be and appear in said circuit court of the United States aforesaid, at the court-room in Los Angeles, on the 4th day of May, A. D. 1891, to answer a bill of complaint exhibited against you in said court by the United States of America, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 26th day of March, in the year of our Lord one thousand eight hundred and ninety-one and of our Independence the one hundred and fifteenth.

[SEAL.]
WM. M. VAN DYKE,
Clerk.

[Memorandum pursuant to rule 12, Supreme Court, U. S.]

You are hereby required to enter your appearance in the above suit on or before the first Monday of May next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso.*

WM. M. VAN DYKE,
Clerk.

MARSHAL'S RETURN.

UNITED STATES MARSHAL'S OFFICE,
Southern district of California.

I hereby certify that I received the within writ on the 26th day of March, 1891, and personally served the same on the 1st day of April, 1891, by delivering to and leaving with James John Martin, said defendant named therein, personally, at the county of Tulare, in said district, a certified copy thereof.

GEO. E. GARD,
U. S. Marshal.
By M. F. TARBLE,
Deputy.

LOS ANGELES, *April 11th, 1891.*

(Endorsed:) No. 238, U. S. circuit court, ninth circuit, southern district of California. In equity. United States of America *vs.* James John Martin. Subpoena. Filed April 11th, 1891. Wm. M. Van Dyke, clerk.

In the circuit court of the United States, ninth circuit, southern district of California.—The United States of America, complainant, *vs.* James J. Martin, defendant.

ANSWER IN EQUITY.

To the judges of the circuit court of the United States for the southern district of California.

The answer of James J. Martin to the bill of complaint of the United States of America, complainant.

This defendant, now and at all times hereinafter, saving and reserving to himself all and all manner of benefit of advantage of exception which can or may be had or taken to the many errors, uncertainties, and other insufficiencies in the complainant's said bill of complaint contained for answer thereunto, or unto so much and such parts thereof as this defendant is advised it is material or necessary for him to make answer unto, answering says:

He admits that on the 30th day of May, 1848, under and by virtue of treaty of Guadalupe Hidalgo, the United States of America acquired from Mexico the lands in said complaint described, and that the said United States of America then was and thereby became the absolute and unqualified owner thereof in fee simple, and was entitled to and in possession thereof. But this defendant denies that at the time of the beginning of this action the complainant was or now is the absolute or unqualified owner thereof, or was entitled to or in possession thereof, or had a fee-simple estate therein. On the contrary, this defendant avers the truth to be that he is the owner of the said land and is entitled thereto, and ever since the fifth day of October, A. D. 1885, has been and now is in the possession thereof.

This defendant, further answering, admits that on the said 30th day of May, A. D. 1848, the said lands became and were the lands of the United States; that they are timber lands and not mineral, and that the said lands are accurately described in the said bill of complaint, according to the United States survey thereof, but denies that the said land or any part thereof is now public land of the United States.

This defendant, further answering, admits that there is a large quantity of timber trees and wood growing and being upon the said lands, but denies that this defendant has threatened, is now threatening or intends, unless restrained by this honorable court, to wrongfully, unlawfully, or otherwise chop down the said timber, trees, and wood, or any part thereof, or remove the same, or cause the same or any part thereof to be removed from the said lands to the great or irreparable injury of the complainant, or at all.

This defendant admits that the lands in controversy in this cause exceed the sum and value of over five thousand dollars, exclusive of interest and costs.

This defendant submits to this honorable court that all and every of the matters in the said complainant's bill of complaint mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief from a court of equity, and this defendant prays to have the same benefit of this defense as if he had demurred to the said complainant's bill.

This defendant denies all unlawful combination and confederacy in the said bill charged, without this, that any other matter, cause, or thing material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant. All of which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HENRY C. DILLON,
Attorney and Solicitor for Defendant.

HENRY C. DILLON,
Of Counsel.

(Endorsed) No. 238. U. S. circuit court, ninth circuit, southern dist. of California. United States of America, complainant, *vs.* James J. Martin, defendant. Answer in equity. Filed May 4th, 1891. Wm. M. Van Dyke, clerk. Henry C. Dillon, solicitor for defendant, Los Angeles, California.

In the circuit court of the United States, ninth circuit, southern district of California.—James J. Martin, complainant *vs.* The United States of America, defendant.

CROSS BILL.

To the judges of the circuit court of the United States for the southern district of California:

James J. Martin, a citizen of the United States and resident of the State of California, brings this his cross bill against the United States of America, the complainant in the original bill of complaint herein, by leave of the court first had and obtained, and thereupon your orator complains and says:

That heretofore and on or about the third day of April, in the year 1884, the following described timber land, situated, lying, and being in the county of Tulare and State of California, more particularly described as follows, to wit: The southeast quarter of section six, township sixteen south, range thirty east, Mount Diablo base and meridian, being the same lands in the original bill of complaint mentioned, was a portion of the public lands of the United States, and had theretofore been surveyed by the defendant and official plats thereof approved by the defendant had been duly filed in the land office of the defendant at Visalia, in the said county of Tulare and State of California, and at the date of the application hereinafter mentioned was open to entry, sale, and settlement, under the provisions of the act of Congress of the said United States, dated June 3rd, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in the Territory of Washington," being chapter 151, United States Statutes at Large, volume 20.

That while the said land was so open and offered for sale and entry by the defendant, as aforesaid and on, to wit, the 6th day of October, in the year 1885, at the land office of defendant at Visalia aforesaid, your orator being desirous in good faith to enter and purchase the said land, and being then and there a citizen of the United States and of the said State of California above the age of twenty-one years, applied to J. D. Hyde, then and there being the register of the said land office, to enter and purchase the said land, and then and there pursuant to law and regulations of defendant, in such case made and provided, made affidavit before said register in due form of law, that he desired to avail himself of the provisions of the said act of Congress, and to enter and purchase the said tract of land. That the said land was timber land of the character mentioned in the said act of Congress, and was nonmineral in character. That the said affidavit was upon the regular prescribed form, and set forth that your orator was a citizen of the United States or had declared his intention to become such, that he was over the age of twenty-one years, that the said land was unfit for cultivation, and it was valuable chiefly for its timber. That it was uninhabited, that it contained no mining improvements whatever, nor, as he verily believed, any valuable deposits of gold, silver, cinnabar, copper, or coal. That he had made no other application under said act. That he did not apply to purchase the said land on speculation, but in good faith appropriated it to his own exclusive use and benefit. That he had not directly or indirectly made any agreement or contract in any way or manner with any person or persons whomsoever by which the title he might acquire from the defendant might inure, in whole or in part, to the benefit of any person except himself. That said affidavit was made in duplicate, as required by law, and was and is true in every particular.

That upon the filing of said affidavit the said register accepted the same, and did, as required by law, post a notice of such application in said land office for the full period of sixty days and furnished your orator, as such applicant, a copy thereof for publication in the newspaper published nearest the location of the said lands, and notice was then and thereafter caused by your orator to be published in the Visalia Weekly Delta, a weekly newspaper then and there published in the city of Visalia, county of Tulare, and State of California, being the newspaper published nearest the said location of the said land, continuously for a period of sixty days.

That upon the last day appointed in said notice, the same not being less than sixty nor more than ninety days from the first publication of the said notice, your orator furnished to the said register satisfactory evidence that the said notice was duly published, as required by law, such evidence consisting of a copy of the printed notice, and attached thereto an affidavit of the publisher having charge of the newspaper in which the said notice was published, and giving the dates of first and last publications and insertions.

That on the day and year last aforesaid your orator, as such applicant, presented proofs from at least two disinterested witnesses that the said land was of the character contemplated in the said act of Congress; that it was unoccupied and without any improvements; that it apparently contained no valuable deposit of gold, silver, cinnabar, copper, or coal; that at the said hearing no contestant or objector appeared; that your orator further presented then and there a supplemental affidavit, at the request of the said register, reciting again the facts of his first affidavit, as aforesaid, and showing that he had not in the interval incumbered the said land nor made any agreement or contract so that his entry thereof would benefit anyone else, and that the money then and there tendered by your orator, as hereinafter stated, was veritably his own, and not borrowed for the purpose upon the said land. Which said affidavits and proofs, so presented and made as aforesaid, were true in every particular, and were received, accepted, filed, and approved by the said register, and were there and then declared to be, and were in fact, satisfactory to both the register and receiver of said land office.

That then and there, and on to wit, the year last aforesaid, at the land office aforesaid, your orator, as such applicant tendered to Tipton Lindsey, then and there being the receiver of the said land office, the full sum of four hundred and ten dollars ($410) in gold coin of the United States, in payment for the said land, that being the price for one hundred and sixty (160) acres of land at two dollars and fifty cents per acre, together with the legal fees of the said land office.

And your orator further shows unto your honors and alleges that he is advised by counsel, and believes and therefore avers the fact to be true, that the proofs so made as aforesaid, together with the aforesaid tender, covered all the requirements of the law in such case made and provided, and amounted to a legal contract between your orator and the defendant, whereby your orator agreed to purchase, and the defendant agreed to sell the said land, upon your orator's complying with the said act of Congress and the regulations of the defendant herein mentioned; all of which have been duly and fully complied with and performed by your orator, as hereinbefore alleged. And your orator is advised by counsel, and believes, and therefore alleges the fact to be, that by reason of the premises your orator became in equity and good conscience the owner of the said land, and entitled to have the said contract specifically performed by the defendant, and to a patent therefor in due form of law, from the said United States of America.

But, now, so it is, may it please your honors, the said J. D. Hyde, register, and the said Tipton Lindsey, receiver of the said land office, combining and confederating together with one A. J. Sparks, then and there being the Commissioner of the General Land Office of the defendant, and all of them pretending to act under the authority of the defendant, but in truth and in fact acting without authority of law and without any authority whatever; and the said defendant, combining and confederating with divers persons, to your orator unknown, but whose names, when discovered, your orator prays may be inserted herein as defendants to his cross bill, and made parties thereto, with proper and apt words to charge them, and contriving how to injure and oppress your orator and deprive him of the said lands, the said register refused to accept, execute, and deliver to your orator a proper certificate for the entry and purchase of said land, or any certificate whatever of the said entry and purchase by your orator, and the said receiver refused to execute and deliver to your orator a proper, or any receipt for such purchase money so tendered by your orator as aforesaid in payment for the said land.

That thereupon your orator duly and regularly appealed from the decision of the said register and receiver in thus refusing the said tender, and in refusing to issue to him a certificate of the entry and purchase of the said land. That the said appeal was taken to the honorable Commissioner of the General Land Office of the United States of America, within the thirty days allowed by law therefor.

That, afterward, and in said General Land Office, such proceedings were had upon said appeal, that the Commissioner, the honorable William A. Groff, on or about the thirty-first day of March, A. D. 1891, then and there being the Commissioner of the General Land Office, reversed the said decision of the register and receiver of the said land office at Visalia; but afterward, and on or about the tenth day of April, in the year 1891, the honorable John Noble, then and there being the Secretary of the Interior Department of the United States of America, upon reference of the said decision to him from the said Commissioner of the General Land Office, refused to concur therein and refused to issue or recommend to be issued to your orator a patent for the said land and cancelled the said entry. All of which actings and pretences are contrary to equity and good conscience and without authority of law, and tend to the manifest wrong and injury and oppression of your orator.

In tender consideration whereof, and forasmuch as your orator has no remedy without the assistance of a court of equity: To the end, therefor, that the said defendant, the United States of America, complainant in the original bill of complaint herein, may, if it can show why your orator should not have the relief herein prayed, and just, true and perfect answer make (but not under oath, the answer under oath being hereby expressly waived) according to its best knowledge, information and belief, to each, all, and singular the matters and charges aforesaid, and that the said complainant, the United States of America be ordered and adjudged and decreed to receive from your orator the said sum of four hundred and ten dollars ($410) so tendered as aforesaid in payment of the said land and the legal fee of the said land office, which said sum of money your orator now brings here into court and renews his tender thereof to the said defendant, and that the said defendant may be ordered, adjudged, and decreed to execute and deliver to your orator a certificate in due form of law of your orator's entry and purchase aforesaid and also patent for the said land in due form of law, conveying to your orator, his heirs and assigns, the fee-simple title of, in, and to the said land, and that your orator may have such other and further relief in the premises as to your honors may seem meet and the circumstances of the case require.

May it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, to be directed to the said defendant, the United States of America, commanding the said defendant to appear in this honorable court by a certain day, and under a certain penalty to be therein inserted, and then and there to answer the premises, and further to stand to and abide by such order and decree therein as shall be agreeable to equity and good conscience, and your orator will ever pray, etc.

JAMES J. MARTIN,
By HENRY C. DILLON,
Attorney and solicitor for complainant.
HENRY C. DILLON,
Of counsel.

(Endorsed:) No. 238, U. S. circuit court, ninth circuit, southern dist. of California. James J. Martin, complainant, vs. United States of America, defendant. Crossbill in equity. Filed May 6th, 1891. Wm. M. Van Dyke, clerk. Henry C. Dillon, solicitor for complainant, Los Angeles, California.

In the circuit court of the United States, ninth circuit, southern district of California. James J. Martin, complainant, *vs.* The United States of America, defendant.

DEMURRER TO CROSS BILL.

This defendant, by protestation, not confessing all or any of the matters and things in the said complainant's cross bill contained, to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said cross bill, and for cause of demurrer showeth:

I.

That the said complainant has not by his said cross bill made such a case as entitles him in a court of equity to any relief against it, the said defendant, as to the matters contained in the said cross bill, or any of such matters; nor entitle the said complainant to any relief in this court, touching any of the matters therein complained of.

II.

That it appears in and by said cross bill that the causes of complaint are stale, and that so long a time has passed since the matters and things complained of took place that it would be contrary to equity and good conscience for a court to take cognizance thereof and to enforce any other or further answer thereto.

III.

That it appears from said cross bill that the laches of complainant have barred his right of recovery.

W. H. H. MILLER,
Attorney-General of the United States, Solicitor for Defendant.
WILLOUGHBY COLE,
United States Attorney for the Southern District of California, of Counsel.

I, Willoughby Cole, of counsel for the United States of America, defendant in the above cross suit, do hereby certify that the foregoing demurrer to the cross bill is in my opinion well founded in law.

W. COLE,
United States Attorney for the Southern District of California, of Counsel.

THE UNITED STATES OF AMERICA, *Southern District of California, ss:*

Willoughby Cole, United States attorney for the southern district of California, being duly sworn, doth depose and say, for and on behalf of the United States, defendant to the cross bill herein, that the foregoing demurrer is not interposed for the purposes of delay.

WILLOUGHBY COLE.

Subscribed and sworn to before me this 1st day of June, A. D. 1891.

[SEAL.] WM. M. VAN DYKE,
Commissioner and Clerk of the U. S. Circuit Court
for the Southern District of California.

(Endorsed:) No. 238. U. S. circuit court, ninth circuit, southern dist. of California. James J. Martin, complainant, *vs.* United States of America, defendant. Demurrer to cross bill. Service admitted this 1st day of June, 1891. * * * Solicitor for complainant. Filed June 1st, 1891. Wm. M. Van Dyke, clerk. Hon. W. H. H. Miller, Attorney-General. Willoughby Cole, U. S. attorney.

In the circuit court of the United States, ninth circuit, southern district of California. The United States of America, complainant, *vs.* James J. Martin, defendant.

REPLICATION.

Replication of the United States of America, complainant, to the answer of James J. Martin, defendant.

This repliant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant for replication thereunto, saith: That it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

W. H. H. MILLER,
Attorney-General of the United States, Solicitor of Complainant.
WILLOUGHBY COLE,
United States Attorney for the Southern District of California, of Counsel.

(Endorsed:) No. 238. U. S. circuit court, ninth circuit, southern dist. of California. United States of America, complainant, *vs.* James J. Martin, defendant. Replication. Service admitted this —— day of June, 1891. * * * Solicitor for defendant. Filed June 10th, 1891. Wm. M. Van Dyke, clerk. Hon. W. H. H. Miller, Attorney-General. Willoughby Cole, U. S. attorney.

At a stated term, to wit, the January term, A. D. 1892, of the circuit court of the United States of America, of the ninth judical circuit, in and for the southern district of California, held at the court room in the city of Los Angeles on Monday, the twenty-third day of May, in the year of our Lord one thousand eight hundred and ninety-two:

Present, the honorable Erskine M. Ross, district judge.

United States of America, complainants, *vs.* James John Martin, defendant. James John Martin, cross-complainant, *vs.* United States of America, defendants. No. 238.

ORDER SUSTAINING DEMURRER TO CROSS BILL.

It having been stipulated and agreed by and between counsel for the respective parties to said cause in open court that the demurrer of the United States of America to the cross bill of complaint of James John Martin, defendant and cross complainant, be disposed of in accordance with ruling of the court upon the demurrer to the cross bill of complaint in the cause entitled, The United States of America, complainants, *vs.* Walter Braddock, defendant, and Walter Braddock, cross complainant, vs. The United States of America, defendants, No. 210, and the court having this day sustained the demurrer to the cross bill in said cause, No. 210, it is now accordingly ordered that the demurrer of the United States of America to the cross bill of complaint of James John Martin, defendant and cross complainant, be, and the same hereby is, sustained; and thereupon H. C. Dillon, esq., of counsel for James John Martin, defendant and cross complainant, having moved the court for thirty (30) days time in which to amend said cross bill of complaint, it is by the court ordered that said motion for time in which to amend be, and the same hereby is, denied; and thereupon M. T. Allen, esq., United States attorney for the southern district of California, and of counsel for the United States of America, complainants in said cause, having moved the court that said cross bill of complaint be dismissed, it is now ordered that said motion to dismiss be, and the same hereby is, submitted to the court for its consideration and decision until Tuesday, the 24th day of May, 1892, at 10:30 o'clock a. m.

At a stated term, to wit, the January term, A. D. 1892, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, held at the court room in the city of Los Angeles on Tuesday, the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and ninety-two:

Present, the honorable Erskine M. Ross, district judge.

United States of America, complainants, *vs.* James John Martin, defendant—James John Martin, cross complainant, *vs.* United States of America, defendant.—No. 238.

ORDER DISMISSING CROSS BILL.

Now comes James John Martin, defendant and cross complainant, herein, by H. C. Dillon, esq., his counsel, and renews his motion for leave to amend his cross bill of complaint herein, and said motion having been argued by H. C. Dillon, esq., of counsel as aforesaid, it is now by the court ordered that said motion be and the same hereby is denied; it is further ordered that the motion heretofore, to wit, May 23, 1892, made herein by M. T. Allen, esq., United States attorney for the southern district of California and of counsel for the United States of America, complainants in said cause, that said cross bill of complaint be dismissed be, and the same hereby is, granted, and that said cross bill of complaint be dismissed; it is further ordered that James John Martin, defendant and cross complainant have ten (10) days time in which to prepare and file his bill of exceptions.

In the circuit court of the United States, ninth circuit, southern district of California.—The United States of America *v.* Walter Braddock.

OPINION.

This suit was commenced to obtain an injunction restraining the defendant from cutting timber from a certain quarter-section of timber land situated in township 15 south, range 25 east, Mount Diablo base and meridian, of which the bill alleges the Government is, and since the acquisition of California, has been, the owner in fee.

The defendant filed an answer to the bill and also a cross bill, to which the Government interposed a demurrer, now for disposition.

The cross bill in effect alleges that on the 5th day of October, 1885, the land in question was surveyed unappropriated timber land of the United States and open to sale under the terms and provisions of the act of Congress of June 3d, 1878 (20 Stats., 89), known as the timber and stone act; that on that day cross complainant had the necessary qualifications to enter and purchase the land, and did then, pursuant to law and the regulations of the land department, make application to purchase it by presenting to the register of the land office of the district in which the land is situate his affidavit, in duplicate, setting forth the statutory requirements and which was in all things true. That upon the filing of the affidavit the register posted a notice of the application to purchase in the land office for the period of sixty days, and furnished the cross complainant, as such applicant, a copy thereof for publication in the newspaper published nearest the location of the land, which notice the applicant caused to be so published continuously for sixty days. That upon the last day appointed in the notice, which was not less than sixty nor more than ninety days from its first publication, cross complainant furnished to the register satisfactory evidence that the notice was published as required by law, and that at the same time cross complainant, as such applicant, "presented proofs from at least two disinterested witnesses that the said land was of the character contemplated in the said act of Congress; that it was unoccupied and without any improvements; that it apparently contained no valuable deposit of gold, silver, cinnabar, copper, or coal. That at the hearing no contestant or objector appeared; that your orator further presented then and there a supplemental affidavit, at the request of the said register, reciting again the facts of his first affidavit, as aforesaid, and showing that he had not in the interval encumbered the said land nor made any agreement or contract so that his entry thereof would benefit anyone else, and that the money then and there tendered by your orator, as hereinafter stated, was veritably his own, and not borrowed for the purpose upon the said land; which said affidavits and proofs so presented and made as aforesaid, were true in every particular, and were received, accepted, filed, and approved by the said register, and were then and there declared to be, and were in fact, satisfactory to both the register and receiver of said land office. That then and there, and on, to wit, the year last aforesaid, at the land office aforesaid, your orator, as such applicant, tendered to Tipton Lindsey, then and there being the receiver of the said land office, the full sum of four hundred and ten dollars in gold coin of the United States, in payment for the said land, that being the price for 160 acres of land, at two dollars and fifty cents per acre, together with the legal fees of the said land office."

The cross bill further alleges as follows: That "The said J. D. Hyde, register, and the said Tipton Lindsey, receiver, of the said land office, combining and confederating together with one A. J. (Wm. A. J.) Sparks, then and there being the Commissioner of the General Land Office of the defendant, and all of them pretending to act under the authority of the defendant, but in truth and in fact acting without authority of law and without any authority whatever; and the said defendant, combining and confederating with divers persons to your orator unknown, but whose names when discovered your orator prays may be inserted herein as defendants to his cross bill, and made parties hereto, with proper and apt words to charge them, and contriving how to injure and oppress your orator and deprive him of the said lands, the said register refused to accept, execute, and deliver to your orator a proper certificate for the entry and purchase of said land, or any certificate whatever of the said entry and purchase by your orator, and the said receiver refused to execute and deliver to your orator a proper or any receipt for such purchase money so tendered by your orator as aforesaid in payment for the said land. That thereupon your orator duly and regularly appealed from the decision of the register and receiver in thus refusing the said tender, and in refusing to issue to him a certificate of the entry and purchase of the said land. That the said appeal was taken to the honorable Commissioner of the General Land Office of the United States of America within the thirty days allowed by law therefor. That afterward, and in said General Land Office, such proceedings were had upon said appeal that the Commissioner, the honorable William A. (Lewis A.) Groff, on or about the 31st day of March, A. D. 1891, then and there being the Commissioner of the General Land Office, reversed the said decision of the register and receiver of the said land office at Visalia; but afterward, and on or about the 10th day of April, in the year 1891, the honorable John Noble, then and there being the Secretary of the Interior Department of the United States of America, upon reference of the said decision to him from the said Commissioner of the General Land Office, refused to concur therein, and refused to issue or recommend to be issued to your orator a patent for the said land and cancelled said entry."

The act under which the cross complainant applied to purchase the land in question is, as has been said, that of June 3d, 1878, 20 Stats., 89. By the first section of the act it is provided that, subject to certain provisions not necessary to be mentioned, the surveyed public lands of the United States within the States of California, Oregon, and Nevada, and in Washington Territory, not included within military, Indian, or other reservations of the United States, valuable chiefly for timber, but unfit for cultivation, and which have not been offered at public sale according to law, may be sold to citizens of the United States, or persons who have declared their intention to become such, in quantities not exceeding one hundred and sixty acres to any one person or association of persons, at the minimum price of two dollars and fifty cents per acre.

By the second section it is provided that any person desiring to avail himself of the provisions of the act shall file with the register of the proper district a written statement in duplicate, one of which is to be transmitted to the General Land Office, designating by legal subdivisions the particular tract of land he desires to purchase, setting forth that the same is unfit for cultivation, and valuable chiefly for its timber or stone; that it is uninhabited; contains no mining or other improvements, except for ditch or canal purposes, where any such do exist, save such as were made by or belong to the applicant, nor, as deponent verily believes, any valuable deposit of gold, silver, cinnabar, copper, or coal; that deponent has made no other application under the act; that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself, which statement must be verified by the oath of the applicant.

By the third section it is provided that upon the filing of the statement, as provided in the second section of the act, the register shall post a notice of the application embracing a description of the land, in his office for sixty days, and shall furnish the applicant a copy of the same for publication in a newspaper published nearest the location of the land for a similar period, and after the expiration of the sixty days, if no adverse claim shall have been filed, the person desiring to purchase shall furnish to the register satisfactory evidence, first, that notice of the application was duly published as required; secondly, that the land is of the character contemplated in the act, unoccupied and without improvements, other than those excepted, and that it apparently contains no valuable deposits of gold, silver, cinnabar, copper, or coal, and upon payment to the proper officer of the purchase money of the land, together with the fees of the register and receiver, the applicant may be permitted to enter the land, and on the transmission to the General Land Office of the papers and testimony in the case, a patent shall issue thereon. It is also provided that effect shall be given to the provisions of the act by regulations to be prescribed by the Commissioner of the General Land Office.

It is perfectly clear that the mere filing of the application to purchase under this act confers upon the applicant no right as against the United States, and that until the applicant has acquired a vested right in the land it is within the power of the Government to withdraw it from sale or make any other disposition of it. The filing of an application to purchase may initiate a right to purchase as against a subsequent applicant for the same privilege, but to say that the initiation of such a right imposes an obligation on the Government to convey the title is to confound the manifest distinction pointed out by the Supreme Court in the Yosemite Valley case (11 Wall., 77), between the acquisition of a legal right to the land as against the owner, the United States, and the acquisition of a legal right as against other parties to be preferred in its purchase. "It seems to us little less than absurd," said the court, in the case cited, "to say that a settler or any other person, by acquiring a right to be preferred in the purchase of property, provided a sale is made by the owner, thereby acquires a right to compel the owner to sell, or such an interest in the property as to deprive the owner of the power to control its disposition."

There can be no doubt of the correctness of the doctrine that where one offers to do everything upon which the acquisition of a right depends and is prevented by the fault of the other side, his right is not lost by his failure. It is strenuously urged by counsel for cross complainant that the present case comes within this principle. But the difficulty is that the cross bill does not show that the cross complainant was prevented from entering the land in question by reason of any fault on the part of the officers of the Land Department of the Government. Such a fault, if it existed, should have been set forth. The facts in respect to the matter should have been stated. It is not enough to charge generally, as is done in the cross bill, that the then register and receiver and Commissioner of the Land Office combined to deprive cross complainant of the land in question, without stating the acts done or omitted to be done in pursuance of such combination. It is alleged that the receiver of the land office refused to execute to the cross complainant a receipt for the money tendered for the land, and that the register refused to execute to him a certificate of entry or purchase. And although there is no direct averment of the fact it sufficiently appears, the pleading being taken, as it should be, most strongly against the pleader, that the officers of the local land office refused to receive the money tendered or to permit the cross complainant to enter the land. *Why*, does not appear from the cross bill.

In an opinion by the Secretary of the Interior in regard to this same land, in connection with other lands, rendered April 6, 1891 (Copp's Land Owner of May 1, 1891, p. 35), it is said that the tender of payment was refused and the application to purchase rejected by the local officers, for the reason that by telegram of December 2, 1885, and letter of December 24, 1885, the townships in which the said lands are situate were suspended from entry or filing under the land laws by the Commissioner of the General Land Office; that such suspension and withdrawal of the townships was on account of alleged irregularities and fraud on the part of the claimants, and that this order of suspension and withdrawal was not revoked as to the townships in which the lands in question are situate prior to the acts of Congress of September 25 and October 1, 1890 (26 Stats., 478 and 650), purporting to reserve the land in question, among other lands, for a park and other purposes. The matters thus stated in the opinion of the Secretary of the Interior can not perhaps be accepted as facts in passing upon the demurrer to the crossbill, since that pleading omits all mention of them; but it is sufficient ground of objection to it that they *may* have constituted the reason why the officers of the Land Department of the Government refused to receive the cross complainant's money for the land or to permit him to enter it.

"The Commissioner of the General Land Office exercises a general superintendence over the subordinate officers of his department, and is clothed with liberal powers of control, to be exercised for the purposes of justice and to prevent the consequences of inadvertence, irregularity, mistake, and fraud in the important and extensive operations of that officer for the disposal of the public domain." (Bell *v.* Hearne, 19 How., 262.) And by the third section of the act under which the application in question was made the Commissioner is expressly required to give effect to its provisions by regulations to be prescribed by him.

As was justly said by the Secretary of the Interior in the opinion to which allusion has been made, an application to purchase land under the act of June 3, 1878, is certainly, as against the United States, of no greater force than a claim initiated by settlement and residence upon, and improvement of, public lands under the provisions of the late preëmption law, in respect to which the doctrine is firmly established that the power of regulation and disposition conferred upon Congress by the Constitution only ceases when all the preliminary acts prescribed by the statute for the acquisition of the title, including the payment of the price for the land, have been performed by the settler.

"When these prerequisites have been complied with," said the court in the Yosemite case, *supra*, "the settler, for the first time, acquires a vested interest in the premises occupied by him of which he can not be subsequently deprived. He is then entitled to a certificate of entry from the local land officers, and ultimately to a patent for the land from the United States. Until such payment and entry the acts of Congress give to the settler only a privilege of preëmption in case the lands are offered for sale in the usual manner; that is, the privilege to purchase them in that event in preference to others."

For the reasons stated the demurrer must be sustained, without reference to other objections urged to the cross bill.

So ordered.

Ross,
District Judge.

(Endorsed:) No. 210, U. S. circuit court, southern district of California. The United States of America, complainants, vs. Walter Braddock, defendant. Opinion. Filed May 23rd, 1892. Wm. M. Van Dyke, clerk.

In the circuit court of the United States, ninth circuit, sitting within and for the southern district of California.—The United States of America, complainant, *vs.* James J. Martin, defendant.

BILL OF EXCEPTIONS.

Be it remembered that heretofore and on the 24th day of May, A. D. 1892, this cause coming on to be heard upon the demurrer of complainant to the cross bill of the said defendant as cross complainant herein, Mathew T. Allen, esq., United States attorney, appeared for complainant, and H. C. Dillon, esq., for the said defendant and cross complainant;

And the said demurrer having therefore been argued by said counsel, respectively, in writing, and submitted to the judgment of the court;

And the court being sufficiently advised in the premises, sustained the said demurrer;

To which judgment and decision of the court the said defendant and cross complainant, by his counsel, then and there excepted;

And thereupon said cross complainant, by his counsel aforesaid, moved the court for leave to amend his said cross bill; but the court then and there refused to permit the said cross complainant to amend his cross bill and denied his said motion.

To which ruling and decision of the court the said cross complainant by his counsel then and there excepted.

And thereupon on motion of counsel for complainant it was ordered, adjudged, and decreed by the court that the said cross bill be dismissed, and to this order and decree counsel of said cross complainant then and there also excepted.

And forasmuch as the matters and things aforesaid are not of record in this honorable court, the said cross complainant now presents to the court this his bill of exceptions, setting forth the said matters, and prays that the same may be signed and sealed as required by law.

Which is accordingly done, this 1st day of May, 1892.

Ross,
Dist. Judge.

(Endorsed:) No. 238, U. S. circuit court, southern district of California. United States vs. James J. Martin. Received copy of the within this 28th day of May, 1892. M. T. Allen, U. S. att'y. Filed June 1st, 1892. Wm. M. Van Dyke, clerk. Henry C. Dillon, att'y for cross compl.

United States circuit court of appeals, for the ninth judicial circuit.—The United States of America *vs.* James J. Martin. No. —.

In the matter of the appeal of James J. Martin, appellant.

ASSIGNMENT OF ERRORS.

And now comes the appellant in the above-entitled cause, and says that in the records and proceedings therein there is manifest error in this, to wit:

(1) The circuit court of the United States, sitting within and for the southern district of California erred in sustaining the demurrer of the complainant to the cross bill of the defendant, cross-complainant and appellant herein.

(2) The circuit court of the United States, sitting within and for the southern district of California, erred in denying the motion of the defendant, appellant herein, for leave to amend his cross bill.

(3) The circuit court of the United States, sitting within and for the southern district of California, erred in granting the motion of the complainant to dismiss the cross bill of the appellant herein in said cause.

Wherefore, the said James J. Martin, appellant, prays that the decree of the circuit court of the United States, sitting within and for the southern district of California, be reversed, and that the circuit court of the United States, sitting within and for the southern district of California, be ordered to enter a decree—

(1) Overruling the demurrer of the complainant to the cross bill of the appellant herein.

(2) Allowing cross complainant, appellant herein, to amend his cross bill.

(3) Denying the motion of the complainant to dismiss the cross bill of the cross complainant, appellant herein.

Henry C. Dillon,
Attorney for Appellant.

(Endorsed:) No. —. In the United States circuit court of appeals for the ninth judicial circuit. The United States of America vs. James J. Martin, assignment of errors. Filed July 1st, 1892, Wm. M. Van Dyke, clerk. Henry C. Dillon, attorney for appellant.

In the circuit court of the United States, sitting within and for the southern district of California.—No. 238. The United States of America, complainant, *vs.* James J. Martin, defendant.

PETITION FOR ALLOWANCE OF APPEAL.

James J. Martin, defendant and cross complainant in the above-entitled action, feeling himelf aggrieved by the decretal order of the court, made by the said court on the 23d day of May, 1892, sustaining the demurrer of the complainant to the cross bill of the cross complainant herein, and the further order denying the motion of cross complainant for leave to amend his cross bill, and the further decretal order made by said court on the 25th day of May, 1892, and the decree made and entered on said day in pursuance of said order whereby it is ordered, adjudged, and decreed that the cross bill of cross complainant herein be dismissed with costs to the said cross complainant, defendant herein, and said cross complainant having preserved his exceptions to the said matters by bill of exceptions thereto duly signed, sealed, settled, and filed with the clerk of this C court on the 1st day of June, 1892, comes now, by Henry C. Dillon, esq., his attorney and counsel, and petitions said court for an order allowing said defendant, cross complainant herein, to prosecute an appeal from said decree to the honorable the United States circuit court of appeals for the ninth circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which cross complainant shall give and furnish upon such appeal, and that upon giving of such security all further proceedings of this court be suspended and stayed until the determination of said appeal by said United States circuit court of appeals.

And your petitioner will ever pray.

HENRY C. DILLON,
Attorney and Counsel for James J. Martin, Defendant and Cross Complainant.

(Endorsed:) No. 238. In the circuit court of the United States, sitting within and for the southern district of California. The United States of America, complainant, *vs.* James J. Martin, defendant. Petition for leave to prosecute an appeal, filed July 1st, 1892. Wm. M. Van Dyke, clerk; Henry C. Dillon, attorney and counsel for defendant.

At a stated term, to wit, the January term, A. D. 1892, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, held at the court room in the city of Los Angeles on Friday, the first day of July, in the year of our Lord one thousand eight hundred and ninety-two.

Present: The honorable Erskine M. Ross, district judge.

The United States of America, complainants, *vs.* James John Martin, defendant.—James John Martin, cross complainant, *vs.* The United States of America, defendants.—No. 238.

ORDER ALLOWING APPEAL.

Upon motion of W. J. Hunsaker, esq., counsel for James John Martin, defendant and cross complainant, it is ordered that an appeal to the United States circuit court of appeals for the ninth district, from the decretal order heretofore filed and entered herein dismissing the cross complaint of the said James John Martin be, and the same hereby is, allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings herein, be forthwith transmitted to the said United States circuit court of appeals; it is further ordered that the bond for damages and costs on appeal be, and the same hereby is, fixed at five hundred dollars ($500.00).

United States circuit court of appeals for the ninth judicial circuit.—James J. Martin, appellant, *vs.* The United States of America, appellee.

BOND ON APPEAL.

Know all men by these presents, that we, E. K. Green and James Ashman, are held and firmly bound unto the above-named appellee in the sum of five hundred dollars, lawful money of the United States, to be paid to the said appellee, its successors and legal representatives, to which payment well and truly to be made we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

July 8th, 1892.

The condition of the above obligation is such that whereas said appellant has taken an appeal to reverse the decree rendered and entered by the circuit court of the United States within and for ninth judicial district in and for the southern district of California in the cause entitled The United States of America *versus* James J. Martin, No. 238, which said decree was rendered on the 24th day of May, 1892, being a day in the January term, A. D. 1892.

Now, therefore, if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and effect.

E. K. GREEN.
JAMES ASHMAN.

UNITED STATES OF AMERICA, *Southern District of California:*

E. K. Green, being duly sworn, deposes and says that he is a freeholder in said district, and is worth the sum of five hundred dollars, lawful money of the United States, exclusive of property exempt from execution and over and above all just debts and liabilities.

Subscribed and sworn to before me this 6th day of July, 1892.

[SEAL.]

E. H. OWEN,
U. S. Commissioner and Clerk of the U. S. District Court for the Southern District of California.

UNITED STATES OF AMERICA, *Southern District of California:*

James Ashman, being duly sworn, deposes and says that he is a freeholder in said district, and is worth the sum of five hundred dollars, lawful money of the United States, exclusive of property exempt from execution and over and above all just debts and liabilities.

Subscribed and sworn to before me this 8th day of July, 1892.

[SEAL.]

E. H. OWEN,
U. S. Commissioner and Clerk of the U. S. District Court for the Southern District of California.

Approved.

E. M. ROSS,
District Judge.

(Endorsed:) U. S. circuit court of appeals for the ninth circuit. James J. Martin, appellant, vs. the United States of America, appellees. Bond on appeal. Filed July 8th, 1892. Wm. M. Van Dyke, clerk, by E. H. Owen, deputy.

In the circuit court of the United States, ninth judicial circuit, southern district of California.—The United States of America, complainants, *vs.* James John Martin, defendant. James John Martin, cross complainant, *vs.* The United States of America, defendants, No. 238.

CLERK'S CERTIFICATE.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States of America of the ninth judicial circuit in and for the southern district of California, do hereby certify the foregoing 49 written pages, numbered from 1 to 49, inclusive, to be a full, true, and correct copy of the record and of all the proceedings in the above and therein entitled suit, and that the same together constitute the transcript of the record upon appeal to the United States circuit court of appeals for the ninth circuit.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 30th day of July, A. D. 1892.

[SEAL.]

WM. M. VAN DYKE,
Clerk of the United States Circuit Court for the Southern District of California.

UNITED STATES OF AMERICA, *ss:*

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the ninth circuit, to be holden at the city of San Francisco, in the State of California, on the 6th (sixth) day of August, A. D. 1892, pursuant to an order allowing an appeal, entered in the clerk's office of the circuit court of the United

States for the southern district of California, from a decretal order dismissing the cross bill of James John Martin, made and entered in that certain suit wherein the United States of America being complainants, and James John Martin being defendant, said James John Martin is cross complainant and appellant and the United States of America are defendants and appellees, being in equity No. 238, to show cause, if any there be, why the decretal order rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Erskine M. Ross, U. S. district judge for the southern district of California and one of the judges of the circuit court, this 8th day of July, A. D. 1892, and of the Independence of the United States the one hundred and seventeenth.

E. M. Ross,
U. S. District Judge.

(Indorsed:) In the United States circuit court of appeals for the ninth circuit, James John Martin *vs.* The United States of America. Citation. Received copy of the within this 8th day of July, 1892. M. T. Allen, U. S. att'y. Filed July 8th, 1892. Wm. M. Van Dyke, clerk, by E. H. Owen, deputy.

EXHIBIT No. 3.

In the circuit court of the United States, ninth circuit, southern district of California.—The United States of America, complainant, *vs.* Walter Braddock, defendant.

DEFENDANT'S BRIEF IN SUPPORT OF CROSS BILL.

The statement and stipulation of counsel for the United States, that the judgment of the court on the demurrer in this case shall be final and conclusive to all the other similar actions, numbers from 210 to 270, in which I appear for the defendants (about sixty-five cases in all) is agreed to, reserving only the right of appeal.

I.

STATEMENT OF CASE.

The original bill of complaint alleges that the United States has been and now is the absolute and unqualified owner, by title in fee simple, and in possession and entitled to the possession of the lands in controversy ever since the treaty of Guadaloupe Hidalgo; that the lands are covered with timber, which the defendant is threatening and intends to cut and remove. The bill prays for an injunction and for such other and further relief as the court may deem equitable.

The answer denies that the complainant was the absolute and unqualified owner of the land, or was in the possession or entitled to the possession thereof, or had a fee-simple estate therein at the commencement of this action.

On the contrary, defendant avers the truth to be that he was the owner of the land and is entitled thereto, and ever since the 5th day of October, A. D. 1885, has been and now is in the possession thereof. Defendant denies all allegations as to threats and intention to unlawfully cut or remove any timber. The issues tendered by this answer are: (1) Title to the land; does it belong to the complainant or the defendant? (2) Is the complainant entitled to an injunction?

CROSS BILL.

To the original bill of complaint, the defendant filed a cross bill, in which he claims equitable title to the lands in himself; he bases his claim upon a full compliance with the terms and conditions of sale of the land in question imposed by complainant and required by law. (20 Sta. at Lg. Chap. 151, Act June 3, 1878.) He avers that on October 5, 1885, he applied to the register of the land office at Visalia to *enter* and purchase this land; he then sets forth with particularity each step taken by him to comply with the contract of purchase on his part, and shows that he complied with the statute and with every regulation of the Land Department. He made his final proofs and avers that they were received, approved by, and were satisfactory to, the local land officers.

Finally, he avers a tender of the purchase price and all fees, and the refusal of the receiver to accept the tender, and of the register to issue the usual certificate of entry and purchase.

Defendant avers "that he was advised by counsel and believes, and therefore avers the fact to be true, that the proof so made as aforesaid, together with the aforesaid tender, covered all the requirements of the law in such case made and provided, and amounted to a contract between your orator and the defendant, whereby your orator agreed to purchase and the defendant agreed to sell the said land upon your orator's complying with the said act of Congress, and the allegations of the defendant herein mentioned, *all of which have been duly and fully complied with and performed by your orator as hereinafter alleged.* And your orator is advised by counsel and believes, and therefore alleges the fact to be, that by reason of the premises your orator became in equity and good faith the owner of the said land, and entitled to have the said contract specifically performed by the defendant, and to a patent therefor in due form of law from the said United States of America."

The appeal from the register and receiver at Visalia to the General Land Office, the reversal of the decision of the local land officers by the Commissioner of the General Land Office, and its final approval by the Secretary of the Interior, and his refusal to issue a patent to defendant for the land, are all set forth in the cross bill for the purpose of showing that defendant has been through the mill and exhausted all his remedies outside the courts.

Defendant insists that the actings and doings aforesaid are contrary to equity and good conscience. He prays for a decree compelling the complainant to receive the purchase money so tendered and issue to him the usual patent for the land.

THE DEMURRER.

To the above cross bill complainant demurred upon the following grounds: (1) Generally for want of equity. (2) Defendant's causes of complaint are stale. (3) Laches.

II.

THE LAW OF THE CASE.

Counsel abandons the second and third grounds of his demurrer in his argument, and relies wholly on his contention that the cross bill does not state such a cause as to entitle the defendant to any relief in a court of equity. In support of this contention counsel gives various reasons which will be noted in detail.

(1) DISTINCT MATTERS.

Cousel says the cross bill is really an original bill and sets up "distinct matters and rights" not put in issue by the original bill. The answer to this objection is a simple denial.

The law, as quoted from Story's Equity Pleads., sec. 631, to the effect that a cross bill is a matter of defense, and is therefore confined to matters in litigation in the original suit, is not disputed, but it does not touch the point in dispute. The matter in litigation in the original suit is the ownership of the land. Its title is in issue. The defendant claims to be the equitable owner in possession. If this is true, it is a complete defense to the original bill. "A cross bill is a matter of defense," says counsel, and then quotes laboriously from the learned authorities to establish just what the defendant is doing by his cross bill.

Asserting title in himself as a defense, and averring good and sufficient reasons in the law why a perpetual injunction should not be granted against him, counsel appears to have been misled by the prayer of his own bill; he seems to entertain the idea that because the United States only wants an injunction, our cross bill can only treat of injunctions. The equitable doctrine invoked by the defendant that when equity attaches for any purpose it extends to the whole controversy and for all purposes. (I Pom. Jour., sec. 181, 231-242.)

Mr. Story himself says in his work on jurisprudence (9 Ed. Redfield, sec. 64 K): "The jurisdiction having once rightfully attached, it shall be made effectual for the purposes of complete relief." This doctrine is as true of injunction cases as of any other cases in equity. (I Pom. Eq., Jur. sec. 236. Kent's Comm., pp. 430, 431.)

Wherever a court of equity has jurisdiction of cases asking the remedy of injunction even for a special purpose, and even where that remedy covers only a portion of the controversy, it may go on and decide all the issues and make a final decree giving full relief. Where the court has jurisdiction of a case as made by the plaintiff, it may go on and decide matters of which it would have had no original jurisdiction. (Pom. Eq. Jur., sec. 239, note 3; 3 McLean 523, Brooks *vs.* Stolley.)

The latter case was an infringement of a patent, jurisdiction over which is given exclusively to the United States circuit courts. The court not only granted the injunctive relief, but settled the accounts between the parties as to profits.

The cases are numerous where courts of equity, in the exercise of this jurisdiction over all controversies between the parties have determined matters purely legal in their nature. (Pom. Eq. Jur., 240.)

For the purpose of settling such controversies between parties, the Federal courts have taken jurisdiction of parties who are citizens of the same State where they have come in *pro interesse suo*, over whom jurisdiction is particularly decided by the statute.

(110 U. S., 281, Krippendouf *vs.* Hyde; 111 U. S., 521, Railroad Co. *vs.* Railroad Co; 123 U. S., 332, Dewey *vs.* Fairmont Co.)

(2) GOVERNMENT CAN NOT BE SUED.

But the Government of the United States can not be sued without its consent, says counsel. The right to sue the United States must be authorised by some act of Congress or some legislation of an Executive Department, or upon contract with it, expressed or implied; and in cases of this character, except where the act of Congress of March 3, 1887 (24 Stats. at Lg., Chap. 359), provides for suits against the United States in the Court of Claims.

Assuming that counsel has correctly quoted the law, its want of application to the case at bar is quite apparent. The defendant has not sued the United States without its consent; he has not sued the United States at all. The United States has sued him. When the Government of the United States becomes a suitor it submits itself to such principles of justice and such rules of equity as apply between ordinary suitors. (U. S. *vs.* Road Company, 140 U. S., 601.)

This is particularly true in equity cases. (6 Peters, 691, U. S. *vs.* Arredondo; 8 Peters, 150, U. S. *vs.* Ringgold; 7 Peters, 1, U. S. *vs.* Macdaniel; 11 Wheaton, 559, U. S. *vs.* Barker; 4 U. S., 53, U. S. *vs.* Bostwick; 94 U. S., 214, U. S. *vs.* Smith; 9 Wheaton, 738, Osborne *vs.* Bank U. S.; 9 Peters, 711, Mitchell *vs.* U. S.; 17 Wallace, 592, Manufg. Co. *vs.* U. S.; 9 Wheaton, 409, The St. Eago de Cuba; 7 Wallace, 152, The Siren.)

(3) NO SUIT LIES AGAINST THE UNITED STATES TO COMPEL IT TO ISSUE A PATENT.

Under this objection counsel contends that the proper remedy would be by mandamus to compel the President of the United States to sign the patent, because he says "patents for land are required to be signed by the President in person, or in his name by a secretary under his directions," and that ought to be countersigned by the recorder of the General Land Office. Such patents can not be issued and delivered to a party without the signature of the President, and no proceeding to compel the Commissioner of the General Land Office or the Secretary of the Interior to issue such a patent, can be sustained while that provision of the law remains unrepealed. Counsel cites in support of this assertion, 9 Wallace, 314, The Secretary v. McGarrahan. That case decides that the Commissioner of the Land Office can not properly grant a patent, under the act of July, '66 "to quiet land titles in California," unless the purchaser bring himself by affirmative proofs within the terms of the section.

It further decides that the judgment and discretion of the Secretary is not a matter subject to reëxamination by the supreme court of the District of Columbia.

It further decides that mandamus to compel either the Commissioner of the General Land Office or the Secretary of the Interior to issue a patent, can not be sustained under statutes then existing. This case is certainly a boomerang.

Counsel begins by contending that our remedy is mandamus and ends by citing a case where mandamus would not lie. We are very much obliged to counsel for friendly advice, but since the United States has chosen a forum in which to dispute with us the title to the land in question and our right to cut timber upon it either for our own use or otherwise, we shall not forsake such noble game to go after the register and receiver at Visalia, nor even the Commissioner of the General Land Office or the Secretary of the Interior.

It is the United States of America who invited us to go upon these lands and pointed out the terms and conditions upon which we could become the owners of it, and from that great and good Government we expect and demand full redress before this honorable court shall let go its jurisdiction. There are maxims in equity which apply to a case like the one at bar that apply to the United States as well as to individuals.

"HE WHO SEEKS EQUITY MUST DO EQUITY."

The Government of the United States can not come into this honorable court and ask for equitable relief by way of an injunction against this defendant, while it refuses at the same time to *do* equity towards him. (Story's Eq. Jur; Story's Eq. Jur. sec. 64 E, 9th Ed., Redfield.)

"EQUITY REGARDS THAT AS DONE WHICH OUGHT TO BE DONE."

The demurrer admits the truth of the averments contained in the cross bill; it is therefore in the position of one who has lured another on by its promises of title to a piece of land provided that other would comply with certain conditions and when the conditions have been complied with, refuses to abide by its offer. It is the proper office of a cross bill to set up equitable matters of this kind, in order to obtain complete relief and settle all disputes between the parties. (Story's Eq. Pleads., 392.) It lies to have an agreement specifically performed. (2 Daniel Chan. Pl. and Pr., 1649, 3 Am. Ed.) It is always necessary where defendant is entitled to some positive relief beyond what the scope of the plaintiff's suit will afford. (Id., 1652; 14 Ill. 299, Jones *v.* Smith.) It is a mode of defense to compel a complete decree covering all matters in controversy between the parties. (2 Daniel Chan. Pleads. and Pr., 1653. 4 Metc. (Mass.), 104, Cartwright *v.* Clark, 15 Ala., 501, Nelson *v.* Dunn.)

(4). COURT OF CLAIMS.

Counsel has not fully argued the jurisdiction of the Court of Claims. If he shall cite further in his reply I claim the right to answer them. He will doubtless contend that the jurisdiction of the Court of Claims is confined to money demands, and there is much authority in support of this view. Both counsel and this learned court are aware of a case recently decided by the Supreme Court of the United States, which went up from the district of Oregon. (131 U. S., 1-20; U. S. *v.* Jones.)

The opinion was delivered by Justice Bradley and the dissenting opinion, containing the law of the case, stating clearly and forcibly the law of the case, was filed by Justices Miller and Field. The majority opinion holds that the jurisdiction of the Court of Claims has not been enlarged by the act of Congress of March 3, 1887, neither has it enlarged the jurisdiction of the United States courts so as to give relief in equity cases for the specific performance of contracts. The Jones case arose in Oregon and was an original bill of complaint for the specific performance of a contract, and sought to compel the United States to issue and deliver a patent for timber lands purchased under the act of June 3, 1878. Mr. Justice Miller in his dissenting opinion, page 20, says:"

I can see no other possible object in that part of the statute which covers this new jurisdiction by the use of language which, for the first time in the history of that court, authorized it to take cognizance of cases where the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable, *then to make them suable in such cases*. To hold that the distinct grant of power here provided for is controlled by the fact that this court has, under another statute, decided that it did not then exist, *is simply to nullify this new grant of power*.

The definite purpose of this new act was to confer power which the Court of Claims did not previously have and to authorize it to take jurisdiction of a class of cases of which it had not cognizance before. To say that under such circumstances that new statute is to be crippled and rendered ineffectual in the only new feature which it has in regard to the jurisdiction of that court is in my mind a refusal to obey the law as made by Congress in the matter in which its power is disputed. It is clear to me that Congress intended by this act to enlarge very materially the right of suit against the United States, to facilitate this right by allowing suits to be brought in the circuit and district courts where the parties resided, and that it also designed to enlarge the remedy in the Court of Claims to meet all such cases in law, equity, and admiralty against the United States as would be cognizable in such courts against individuals.

The act of March 3, 1887, is found in 24th U. S. Stats. at Large, page 505, *et seq.*

The first section of that act provides that the Court of Claims shall have jurisdiction to hear and determine the following matters: "All claims founded upon the Constitution of the United States or any law of Congress * * * in respect to which claims the parties would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable." An examination of the debate which took place in Congress upon the passage of this act, H. R. 3974, House bill "to provide for the bringing of suits against the United

States," which came up before the House on March 3, 1887, will show that it was the intention of our learned representatives to permit the United States to be sued upon equitable matters as effectually as upon money demands (p. 2676, Congressional Record, Vol. 18, part 3, 49th Congress, 2 Ses.). However, counsel can not invoke the doctrine of *stare decisis*, because the case at bar presents a different question from the Jones case. Here we are not seeking to sue the United States. The table is exactly turned. The United States has sued us. Conceding that the defendant in this case could not have sued the United States to compel the specific performance of its contract to issue a patent; conceding that he could not force the United States into a court of equity for that purpose, yet, when the United States has come voluntarily into a court of equity with an action respecting the land in controversy, and asking for relief against the defendant concerning said land, then and in that case the jurisdiction of the United States court becomes omnipotent to settle all matters in controversy between the parties respecting the subject-matter of the action.

Aside from all that, however, we contend that the act of March 3, 1887, concerning the Court of Claims is intended to cover such a case as this. There is not to-day a civilized nation on the face of the earth, except the United States, which does not permit actions of this sort to be brought against the Government. The cases at bar are of peculiar hardship, and we therefore urge upon this honorable court the necessity and expediency of drawing the line strictly between them and the Jones case, in order that the Supreme Court may have further opportunity to review the act of March 3, 1887, in the new light which these cases present by way of cross bill. No case exactly like this one at bar has been found, but actions against the United States, involving the principles, are cited below. U. S. *v.* Ringgold, 8 Peters, 150, was an action to recover $345.00 from the plaintiff as marshal of the District of Columbia. Defendant claimed a setoff against the United States on account of poundage fees paid by him. From the opinion of the court, page 163, I quote: "No direct suit can be maintained against the United States. But when an action is brought by the United States to recover money in the hands of a party who has a legal claim against them, it would be a very rigid principle to deny him the right of setting up such claim in a court of justice and turn him round to an application to Congress. If the right of the party is fixed by the existing law there can be no necessity for an application to Congress, except for the purpose of remedy. And no such necessity can exist when this right can properly be set up by way of defense to a suit by the United States." This rule is fully recognized by this court in the case of U. S. *v.* Macdaniel, 7 Peters, 16; U. S. *v.* Barker, 12 Wheaton, 659; U. S. *v.* Arredondo, 6 Peters, 691–709.

In the case of the Sire (7 Wallace, 152 to 154) I quote: "But although direct suits can not be maintained against the United States or against their property, yet, when the United States institutes a suit, they waive their exemption so far as to allow a presentation by the defendant of setoffs legal and equitable to the extent of the demand made or property claimed; and when they proceed *in rem* they open to consideration all claims and equities in regard to property libelled. They then stand in such proceedings, with reference to the rights of defendants or claimants, precisely as private suitors, except that they are exempt from costs and from affirmative relief against them, *beyond the demand or property in controversy.*" (See also 8 Peters, 444, and 7 Peters, 16.)

In the U. S. *v.* Smith (U. S., 214) I qoute: "The only questions presented in this case relate to the liability or the United States for damages growing out of the suspension of the work under the contract sued upon. In effect the contract bound Smith to furnish the materials and erect the buildings, the labor being performed by the soldiers at the fort, except to the extent that skilled workmen were necessary. There was no time specified within which the work must be done, neither was there any power reserved by the United States to direct the suspension. Under such circumstances the law implies that the work should be done within a reasonable time and that the United States would not unnecessarily interfere to prevent this. In Clark's case (6 Wall., 546) it was decided that the United States were liable for damages resulting from an improper interference with the work of a contractor; and in Smoot's case (15 *id.*, 47) *that the principles which govern inquiries as to the conduct of individuals, in respect to their contracts, are equally applicable where the United States are a party.* The same rules were applied in the case of the Amoskeag Co. (17 *Id.*, 592). This opinion was delivered by Chief-Justice Waite."

See also Curtis on jurisdiction of United States circuit courts, page 109 of Story's Eq. Jur., section 28. From Wells on jurisdiction of courts, Vol I, p. 82, sec. 92, I quote:

"Although it is a settled rule that a State can not be sued in its own courts, yet, where it brings a suit, as it is entitled to do, in a civil action, the defendant has a right to bring in a setoff, although this is in the nature of a cross suit."

See also cases there cited and 9 Bush. (Ky.) Commonwealth *v.* Todd.

(5) FOREST RESERVATIONS.

Counsel asserts that by an act of Congress of October 1st, 1890, the land in controversy has been reserved as a forest reservation. The act referred to is chap. 1263 of session 1, 51 Congress, page 650; but sec. 1 of that act contains this proviso: "That nothing in this act shall be construed as in anywise affecting * * * any bona fide entry of land made within the limits above described under any law of the United States prior to the approval of this act." Before arguing the effect of this proviso I have to say that in my humble opinion this portion of counsel's argument has nothing to do with any question raised by this demurrer. Nothing is said in the cross bill about a forest reservation. If, however, as counsel asserts, that the land in question is embraced within said reservation, he should plead that fact in his answer. It is premature and can not be raised by demurrer. Nevertheless, as counsel proceeds to discuss the meaning of the word "entry" as contained in the act of October 1st, and as there may be some question as to whether or not the acts alleged in the cross bill to have been performed by this defendant amounted to an entry, within the meaning of the law, I will discuss that question at some length.

It was alleged in the cross bill that Braddock entered the land—in other words, he has pleaded an entry. If he has omitted to do anything required by law to make his acts amount to an entry, such omissions do not appear in the cross bill, and therefore can not be taken advantage of by demurrer. Let us concede, however, for the purposes of this argument, that the cross bill disclosed every fact which can be put in evidence in support of his entry. Do those acts amount to an entry within the meaning of the act? Counsel refers to the opinion of the Secretary of the Interior in two learned decisions of 1891. It was the opinion of Assistant Attorney-General Shields, accompanied by the instructions of the Secretary to the Commissioner of the General Land Office, ordering the bringing of those suits. General Shields contends that the acts do not amount to an entry, and cites many cases in support of his contention. Let us review them.

In Wilcox *v.* Jackson (13 Peters, 513), which involved the legality of a reservation made by the Secretary of War, the court say, "That whensoever a tract of land shall have been legally appropriated to any purpose, from that moment the land thus appropriated becomes 'severed from the mass of public lands and that no subsequent law, or proclamation, or sale, would be construed to embrace it, or to operate upon it, al though no reservation were made of it.'"

This is a clear instance of begging the question. The question here is, Has this land been legally appropriated to any purpose? Clearly it has not. On the contrary, the intention of Congress to reserve from the reservation all land which has been entered in good faith, is shown by the act itself. If the land in controversy has not been so entered, that fact should be plead by an answer.

He next refers to 13 Wall., 92, Gibson *v.* Chotean. This was a case of mere occupation of land, and the court holds that such occupation does not constitute a sufficient entry in favor of the occupant to control the legal title thus subsequently conveyed. We are not claiming as mere occupants. We are *purchasers* under an act of Congress providing for the sale of its timber lands, and have complied with the offer of the Government and the provisions of the law made with respect thereto, down to and including the tender of the money. 92 U. S. 733, Leavenworth R. R. Co. *v.* U. S., and 132 U. S. 357, R. R. Co. *v.* Whitney, are to the same effect as Gibson *v.* Choteau, and like it are wide of the mark.

General Shields next cites the case of Frisby *v.* Whitney (9 Wall., 187). In that case the Supreme Court says—

"When all these prerequisites are complied with, and the claimant has *paid* the price of the land, he is entitled to a certificate of entry from the register and receiver."

He also cites 15 Wall., 77, the Yosemite Valley case; it is there held that "a party by mere settlement upon lands of the United States with the declared intention to obtain a title to the same under the preëmption laws, does not thereby acquire such a vested right in the premises as to deprive Congress of the power to divest it by a grant to another party." It further holds that "the power of regulation and disposition over the lands of the United States conferred upon Congress by the Constitution only ceases under the preëmption laws, when all the preliminary acts prescribed by those laws for the acquisition of the title, including the *payment of the price of the land*, have been performed by the settler. When these prerequisites have been complied with the settler for the first time acquires a vested interest in the premises occupied by him, of which he can not be subsequently deprived. He then is entitled to a certificate of entry from the local land officers and entitled to a patent for the land from the United States." This case instead of being favorable to the Secretary is favorable to us. The defendant claims to have complied with these prerequisites, and that his tender of the purchase money is equivalent to the payment of it. Upon the payment of this money it is the duty of the local land officers to have issued the contract of purchase.

"Equity regards that as done which ought to have been done." His vested right, therefore, to these lands was completed by the tender of the money.

Simmons v. Wagner (101 U. S., 260) is the next case cited by General Shields. It holds that where a tract of public land has been sold by the proper official of the United States and the purchase money therefor paid, it is not subject to entry where the sale continues in force. I can not see that this case has any application to the one at bar.

The next is Buxton v. Traver (130 U. S., 232). This case holds that a settler upon public lands in advance of the public surveys acquires no estate in the land which he can devise by will, or which, in case of his death intestate, will pass to his heirs at law until he files his declaratory statement and performs the other acts prescribed by law.

This is clearly without point in this case. The defendant here is not a settler in advance of the public surveys; he has made his filing and he *has complied with the law.* Is the Law Department of this great Government so hard pushed for a case that it has to invent a state of facts which do not exist in order to find legal authority for this infamous attempt to deprive a bona fide entryman of a piece of land which it offered to sell to him, which offer he accepted, and for which he tendered the purchase money.

Since General Shields delivered the opinion which we have been arguing, he delivered another on the 12th of October last, on a petition for a rehearing by some members of the Kaweah Colony who reside in New York City. In this opinion he cites Meyers v. Croft (13 Wallace, 291), and as this may be referred to by counsel in his reply, I will speak of it here.

It holds that where a preëmptor who has *entered* land, and who at the time is the owner in good faith, and has done nothing inconsistent with the provisions of the law on the subject, may sell the land even though he has not yet obtained a patent. This case, therefore, instead of being an authority in support of the contention that Braddock and his fellow members of the colony acquired no interest in these lands which the Government is bound to respect, is quite the contrary. It appears from this authority that they acquired rights which are the subject of sale and transfer; if such rights are not vested ones it seems very idle to talk of divesting them by deed.

He again cites Frisby v. Whitney, *supra*, as authority for the position that these colonists had acquired no rights which the Government was bound to respect. In the opinion of this great and good man, this Government respects nothing but vested rights. This case holds that such a right, vested right under the preëmption laws, is only obtained where the purchase money has been paid and the receipt of the proper land office given to the official given to the purchaser. Until this is done it is within the legal and constitutional competency of Congress to withdraw the land from entry and sale, though this may defeat the imperfect right of the settler.

Narrow as this limit is, however, we claim to have complied with it by tender of the money. There was nothing in Whitney's conduct which appealed to the equitable conscience of the court. He had entered upon Frisby's inclosed ground by violence, and the court holds that there was nothing to prove his bona fide occupancy of the land which created an equity superior to Frisby's or which demanded of the court of chancery a decree divesting Frisby of his legal title and vesting it in him.

On page 196, Justice Miller, who delivered the opinion of the court in that case, refers to "a series of cases decided in this court in which the equitable rights of persons claiming under those laws have been protected by the court against the legal title acquired by other parties, through the disregard of their rights by the officers of the Land Department. We can not here examine these cases in detail, but we may state in nearly all of them it will be found that the party whose equitable title was thus protected had, by the action of the officers of the Land Department, and the payment and acceptance of the price, acquired a vested right, which these officers disregarded in violation of law." He also refers to Shipley v. Cowen (91 U. S. 330). This case holds that "where a party has settled upon public land with a view to acquire a right of preëmption, the land being open to settlement, his right thus initiated is not prejudiced by a refusal of the local land officers to receive his proofs of settlement, upon an erroneous opinion that the lands are reserved from sale." Also, the rulings of the Land Department on disputed questions of fact, made in a contested case as to the settlement and improvements of a preëmption claimant, are not open to review by the courts when *collaterally assailed.*"

It further holds "that the officers of the Land Department are specially designated by law to receive, consider, and pass upon proofs with respect to settlements upon the public lands, &c." If they err in the construction of the law, or if fraud be charged upon them, their rulings may be reviewed and annulled by the courts, when a controversy arises between private parties founded upon their decisions. "But for mere errors of judgment upon the weight of evidence in a contested case before them, the only remedy is by appeal from one officer to another of the Department, and, under special circumstances, to the President."

I can not see that it decided anything else pertinent to this case.

From 8 Land Decisions, 412, I cite the case of Henry A. Frederick, decision of Secretary Noble, made on April 19th, 1889.

Syllabus: An application to purchase timber lands under the act of June 3, 1878, should not be rejected on account of a temporary order of reservation made by the General Land Office after the application was made and notice thereof given. From the body of the decision we make the following extracts, which show how peculiarly in point this very case is. The facts of the case as set out in the decision are these:

May 27, 1887, Frederick made application to purchase a quarter section of timber land in the Stockton land district, Cal., and on the same day the register gave the notice by publication, as required by law. No protest or adverse claim was filed, and the claimant, on August 24, 1887, offered his final proof, made before the register of said office, and tendered payment for said land. The proof and payment were refused by the local officers, for the reason that the Commissioner of the General Land Office on July 30, 1887, had reserved said land from entry. (In this case it was two months and three days after claimant filed before the order of suspension was given; in the Kaweah cases it was exactly the same time.) The claimant appealed. His appeal was heard. The Commissioner, on such appeal, affirmed the decision of the local office, for the "reason" that said land was "held for reservation by office letter 'C' of July 30, 1887." (That is to say virtually, for the reason "because," since said letter was issued by the Commissioner himself, and was a simple order without reasons.) The record does not contain a copy of the reasons for such decision, and an inspection of the records of the office shows nothing, except "a pencil memorandum on the press copy indicates that there are 'big trees' on the section." (Whether there are big figures or not should cut no figure at all in the case; at this time Congress has not reserved any land on account of "big trees," or otherwise, and this reservation power lies with Congress; the Commissioner can only "reserve" or "suspend" in cases where the applicant has not followed the statute, and then he must prove that he has not.)

In the records of the Kaweah case there is not even a "pencil memorandum" giving any cause for the suspension; it was suspended, if for any reason at all, because it was in a suspected district. It is only now, after five years, that the question of "big trees" is imported into the Kaweah case.

In the decision the Secretary says: "In the case at bar the applicant filed his statement on oath, and publication was commenced prior to the date of said letter of your office.———

In the case of L. J. Capps, on motion for review, it was held on April 4, 1889 (4 L. D.), that "published notice of an application to make preëmption cash entry so far reserves the land covered by such applications as to prevent its being properly entered by another, pending the consideration of such application." If that decision be correct, and it undoubtedly is, there would seem to be no reason why the same ruling should not apply to a timber-land application where publication has been made, and where parties have had an opportunity to file their adverse claims within the period of publication. "In the present case Frederick had done all that the law required to entitle him to entry if the proof is credible and the land was subject to entry under said act. In the case of the heirs of William Friend (15 L. D., 38), the Department held that the right of a timber applicant becomes vested when he has furnished the proofs by law and paid the purchase money, citing Stark *v.* Starrs (6 Wallace, 402) and Worth *v.* Branson (98 U. S., 118). It was also held that where the applicant tendered the money for the land he had done all the law requires in that respect. But the sole ground of the rejection of said application to purchase is that your office had directed the reservation of said sections, including said tract."

In the opinion of Attorney-General McVeagh it is held that "where a homestead entry on public lands has been made by a settler, the land so entered can not, while such entry stands, be set apart by the President for a military reservation prior to the full completion of title in the settler: but that where a preëmption filing has been made of public lands, the lands covered thereby may be set apart for such reservation by the President at any time previous to *payment* and *entry* by the preëmption settler under the preëmption law. See also the case of John Campbell (6 L. D., 317).'

(But in the Kaweah case the offer to pay must have been equivalent to the payment itself.)

(6) VESTED RIGHTS.

The mere fact that an *entry* of land has been declared void and canceled by the Commissioner of the General Land Office will not have the effect of vacating the entry. He is not a judicial officer and has no power to decree the recision of contracts; and his determination as to the validity of a sale concludes no one in his rights. (35 Ill., 305, Brill *v.* Stiles; 43 Ill., Beatty *v.* Sale.

The power to adjudge and determine upon the validity of a contract and to hold them void devolves alone upon the judiciary. The opinion of the Secretary of the Interior as to the validity of their purchase or as to the meaning of the word "entry" has no controlling effect upon this court. A purchase of land from the Government, when made in pursuance of law, and the payment of the purchase money therefor, and the receipt of the certificate of purchase confers upon the purchaser the equitable title to the premises to the same extent as a sale by the individual owning the fee. (Brill *v.* Stiles. *supra;* 37 Ill., Aldrich *v.* Aldrich; Beatty *v.* Sale, *supra.*)

Whatever may be the power of the public officers in the Department to decline acting when they suspect fraud, there is no principle that can justify the assumption that their decision can divest private rights or dispose of them finally by assuming to rescind the instruments under which these are asserted. A court of justice is not bound by such ex parte and extrajudicial proceedings and must entirely disregard them. (Merrill *v.* Hartwell, 11 Mch., 200; Tate *v.* Carney, 24 Howard, 357, 361, U. S.; People *v.* Treasurer, 7 Mch., 366.)

A court of equity will look into the proceedings before the register and receiver, and even into those of the Land Office or other officers where the right of property of the party is involved, and correct errors of law or of fact to his prejudice. (Minnesota *v.* Batchelder, 1 Wallace, 109, citing Lindsay *v.* Hawes, 2 Black., 254–557, 558.)

But the power (of the Commissioner of the General Land Office) of supervision and correction is not limited or an arbitrary power. It can be executed only when the entry was made upon false testimony, or without authority of law. It can not be exercised so as to deprive any person of land lawfully entered and paid for. By such entry and payment the purchaser secures a vested interest in the property and a right to a patent therefor, and can no more be deprived of it by the order of the Commissioner than he can be deprived by such order of any other lawfully acquired property. Any attempted deprivation in that way of such interest will be corrected whenever the matter is presented so that the judiciary can act upon it. (Cornelius *v.* Kessell, U. S., 456–82.)

In Boyce *v.* Danz (29 Michigan, 146–151), the court decided: Under the statute the proofs are to be made to the satisfaction of the register and receiver. These officers act judicially in passing upon the proofs, and we have not been referred to any statute which authorizes the Commissioner of the General Land Office to review and reverse their action in cases like this where there was no adverse claim under the preëmption laws. (29 Mich., 146–151, Boyce *v.* Danz.)

When the applicant has taken the steps required of him by law to acquire the title to public land, his duties are at an end; and his right to the land can not be defeated by the subsequent neglect of an officer of the Land Department to make a return of the survey. (Taylor *v.* Brown, 5 Cranch, 234.) Or a neglect to note an entry on the books at the Land Office. (Kittredge *v.* Breand, 4 Rob. (La.), 79; Hester *v.* Kenbrough, 12 Smedes and M. (Miss.), 1659–60.; Rev. Stats. U. S., sec. 2295.) Or by reason of an error of the officer in making out his entry papers for different lands than those applied for. (Climer *v.* Selby, 10 La., 182.) Or by the land officers making the entry papers in the name of another. (Knox *v.* Pullian, 14 La. An., 123.)

As to our having acquired an absolute vested right to these lands by the proceedings taken, there is no dissenting doctrine. The four great leading cases on the subject (Lytle *v.* Arkansas, 9 How., 328; Cunningham *v.* Ashley, 14 How., 377; The Yosemite Case, 15 Wall., 77; Shepley *v.* Cowen, 91 U. S. 330; Wilcox *v.* Jackson, 13 Peters, 498) leave no room for doubt as the exact status of the law.

In Lytle *v.* Arkansas (9 How., 333), which is also affirmed and cited in the Yosemite case (15 Wallace, 77), one Cloyes, the preëmptor, selected his claim under the act of Congress of May 28, 1830, authorizing and regulating preëmptions.

A later act, of June 15, 1832, granted to the Territory of Arkansas one thousand acres for a court-house and jail at Little Rock, including the tract claimed. Before this act the preëmption right of Cloyes had accrued under the act of 1830, and he had proved his right and done everything that he could to perfect it. The court say: "By this grant to Arkansas Congress could not have intended to impair vested rights. The grants of the one thousand acres and of the other tracts must be so construed as not to interfere with the preëmption of Cloyes.

The claim of preëmption is not that shadowy thing which by some it is considered to be. Until sanctioned by law (*i. e.*, until the lands are offered for sale and the applicant performs all the conditions on his part) "it has no existence as a substantive right; but when covered by the law it becomes a legal right, subject to be defeated only by a failure to perform the conditions annexed to it.

"The adventurous pioneer who is found in the advance of our settlements encounters many hardships and not infrequently dangers from savage incursions. He is generally poor, and it is fit that his enterprise should be rewarded by the privilege of purchasing the favorite spot selected by him, not to exceed 160 acres. That this is the national feeling is shown by the course of legislation for many years.

"It is a well-established principle that when an individual in the prosecution of a right does everything that the law requires of him to do, and he fails to obtain his right by the misconduct or neglect of a public officer, the law will protect him. In this case the preëmption right of Cloyes having been proved, and *an offer made to pay the money* for the land claimed by him under the act of 1830, nothing more could be required of him under that act; and subsequently, when he paid the money to the receiver under that act, the surveys being returned, he could do nothing more than offer to enter the land, which the register would not permit him to do. This claim of preëmption stands before us in a light not less favorable than it would have stood if Cloyes or his representatives had been permitted by the land office to do what in this respect was offered to be done."

In the Yosemite Valley case (Lewis Leasing case, 73), properly known as Hutchings *v.* Low (15 Wallace, 87), the court decided that—

"When all preliminary acts prescribed by those (preëmption) laws for the acquisition of title, including the payment of the price of the land, have been performed by the settler, then the power of regulation and disposition over the lands of the United States conferred upon Congress by the Constitution ceases. When the prerequisites have been complied with, the settler for the first time acquires a vested interest in the premises occupied by him, of which he can not be subsequently deprived. He is then entitled to a certificate of entry from the local land officers, and ultimately to a patent for the land from the United States." In support of these doctrines the case of Frisby *v.* Whitney (9 Wallace, 194) is cited.

The case of Lytle *v.* Arkansas did not escape the attention of the court in consideration of the case of Frisby *v.* Whitney. That and other cases in which the equitable rights of persons claiming under the preëmption laws had been protected against the legal title acquired by others in disregard of their rights, were cited by counsel and commented upon on the argument as asserting principles inconsistent with the construction of those laws as given by the court.

But the court, without examining the opinion in the cases cited in detail, stated that in nearly all of them the party whose equitable rights were protected had acquired a vested right by action of the land officers, and payment and acceptance of the price of the land, which those officers had disregarded the language (in the case of Lytle *v.* Arkansas) cited by counsel was used by the court, namely, that "it is a well-established principle that," etc. (see paragraph quoted on page 34 hereof, ending with the words "offered to be done."

"There is no question about the correctness of the doctrine here announced; it is only a familiar principle which is here stated, that where one offers to do anything upon which the acquisition of a right depends, and is prevented by the other side, his right shall not be lost by his failure.

"The principle only applies where by law or contract the acquisition of a right is made dependent upon the performance of a certain specified act. There can be no such thing as the acquisition of the right of preëmption; that is, of a right to be preferred in the purchase of property of the United States, until such property is open for sale.

(In our case the land was specifically offered for sale under the act of 1878.)

"In the case from Arkansas the law of 1830 authorized the entry and sale of the land to the occupants and cultivators; it prescribed certain things to be done to entitle them to purchase. These things were done, or would have been done, by Cloyes if the officers of the Government appointed to aid in their performance had not failed in their duty. The hindrance to the complete performance of everything required of the claimants could not impair his rights.

"And it was immediately after affirming the validity of his claim, notwithstanding this hindrance, that the court used the language * * * to the effect that 'a claim of preëmption is not a shadowy right, but when covered by the law is a legal right, subject to be defeated only by a failure to perform the conditions annexed to it.'

"This language was undoubtedly correct as applied to the claim of Cloyes as then situated, which gave occasion to it, and it is in a general sense correct as applied to every claim of preëmption. * * *

"In the case from Arkansas the right of Cloyes had been defeated by the failure of the executive officers to perform their duty under the law, he having complied fully with its provisions, except so far as he was prevented by such failure, and having thus acquired a right to the title by the Government.

"In the present (Yosemite) case no default on the part of the executive officers is alleged or pretended. Had the lands in the Yosemite Valley been opened for sale [the lands of Kaweah were], and had Hutchings acquired a right to the title of the United States by complying with all the conditions upon which the acquisition of that title depended [all of which the Kaweah people did] before the grant to the

State [the Kaweah people did it five years before the Res. act], his position would have had some analogy to that of Cloyes. His right to the title would *then* have been a vested right and the grant to the State would then have been construed so as not to interfere with his preëmption. The case of Lytle *v.* Arkansas is in entire harmony with the principles announced in Frisby *v.* Whitney."

In Shepley *v.* Cowen, (1 Otto, 330, Lewis, 159) Mr. Justice Field, delivering the opinion of the court, said:

"Whenever, in the disposition of the public lands, any action is required to be taken by an officer of the Land Department, all proceedings tending to defeat such action are impliedly inhibited."

"Where a State seeks to select lands as a part of the grant to it by the act of Congress of Sept. 4, 1841, and a settler seeks to acquire a right of preëmption to the same lands, the party taking the first initiatory step, if the same is followed up to a patent, acquires the better right to the premises. The patent dates back to the date of the initiatory act and cuts off all intervening claimants.

"Where a party has settled upon public land with a view to acquire a right of preëmption, the lands being open to settlement, his right thus initiated is not prejudiced by a refusal of the local land officers to receive his proofs of settlement upon an erroneous opinion that the land is reserved from settlement."

It will be noticed that the above decision is exactly in point. In this case Justice Field also again approved the doctrines of Frisby *v.* Whitney and the Yosemite case.

In Wilcox *v.* Jackson (13 Peters, 498; 13 Curtis, 266) it was decided: "Whenever a tract of land has been appropriated to the public use it is severed from the mass of the public domain, and subsequent laws of sale are not construed to embrace it, though they do not in terms except. Appropriation is nothing more or less than setting apart the thing for some particular use. If a register and receiver go outside their authority, then their acts are not voidable, but simply void." (Elliott *v.* Pearson, 1 Peters, 340.)

Other cases:

The doctrines laid down in the four preceding cases have never been reversed or modified, but have been repeatedly affirmed and strengthened. Some of the more important of these affirmations are:

"The doctrine in Wilcox *v.* Jackson, that after a tract lawfully appropriated to any purpose becomes thereafter severed from the mass of the public lands and that no subsequent law or proclamation will be construed to embrace it or to operate upon it, although no exception is made of it, is reaffirmed, and held to apply with more force where other rights (than those of the Government, for public use, as in Wilcox *v.* Jackson) are vested.

"It has been repeatedly held by this court that a patent is void that attempts to convey lands that have been previously granted, reserved from sale, or appropriated." (Leavenworth R. R. Co. *v.* U. S., 2 Otto, 733, citing Best *v.* Polk, 18 Wallace, 112; Stoddard *v.* Chambers, 2 Howard, 284; U. S. *v.* Arredondo, 6 Peters, 728; Richards *v.* Felps, 6 Wallace, 160; New Orleans *v.* U. S., 10 Peters, 731.)

It is well settled that where lands have once been sold by the United States and the purchase money paid, the lands sold are segregated from the public domain and are not subject to entry. A subsequent sale and grant of the same lands would be absolutely null and void so long as the first sale continued in force. (Leavenworth R. R. Co. *v.* U. S., 2 Otto, 733, citing 101 U. S., 260; and see, also, 98 U. S., 118; 9 Wallace, 187; 9 Howard, 314.)

Where the right to a patent for the public lands is vested in the purchaser the Government holds a naked legal title in trust for him. (McClung *v.* Steen, 32 Fed. Rep., 373; U. S. *v.* Freyburg, 32 Fed. Rep., 195.)

The right to patent once vested is equivalent to a patent issued. The patent, when issued, relates back to the inception of the right. (Stark *v.* Star, 6 Wallace, 402; Shepley *v.* Cowan, 91 U. S., 330.)

In Chowning *v.* Stanfield (49 Arkansas, 87) the court said: "Few propositions are better established than that the right of one who has done all that the law requires of him can not be impaired by the subsequent neglect or want of fidelity of a public officer." (Lytle *v.* Arkansas, 9 Howard, 333; Coleman *v.* Hill, 44 Arkansas, 452; 12 Am. Dec., 567, note; see, also, 98 U. S., 118, Wirth *v.* Branson.)

"Stanfield's receipt from the receiver is prima facie evidence that he has complied with the law in making the entry. Citing Garther *v.* Lawson (31 Ark., 279, 285).

"This gave him a vested right to a patent which could be divested only according to law." Citing Johnson *v.* Townsley (13 Wallace, 72-85; 20 Am. Dec., 273, note).

So far does this doctrine go that the courts have decided that the title is the same in all respects as any other equitable title, and that, of course, it can not only be assigned, but levied upon and sold. (Levi *v.* Thompson, 4 Howard, 17; 16 Curtis, 8; Wallace *v.* Wilson, 30 Mo., 235; Hover *v.* Bounds, 1 Ohio St., 107.)

The rule is settled by a long course of decisions that when public lands have been surveyed and placed in the market, or otherwise opened to private acquisition, a person who complies with all the requisites necessary to entitle him to a patent in a particular tract is to be regarded as the equitable owner thereof. The public faith has been pledged to him, and any subsequent grant to another party of the same land is void. (98 U. S., 121, Wirth *v.* Branson; 9 Howard, 314, Lytle *v.* State; 6 Wallace, 402, Stark *v.* Storrs.)

That it may not be urged that the rights acquired under the timber act of 1878 are not of the same character and kind as those vested under the preëmption act, I cite one case decided by the circuit court for the Oregon dist. (36 Fed. Rep., p. 4), which shows conclusively that the general doctrine as to the vesting of property rights is absolutely the same under the law of 1878 as under every other statute of the United States in relation to its public domain.

The title of the case is Montgomery *v.* U. S., and the suit was brought under the act of March 3, 1887 (24 Statutes, 505), entitled "An act to provide for bringing of suits against the Government of the United States." Its object was to compel the issue of a patent to petitioner.

Petitioner on Oct. 29, 1882, he having complied with the requirements of the act of June 3, 1878 (20 Stat., 189, timber act), did purchase the land in question and pay therefor the sum of $400.00, or $2.50 per acre, receiving therefor the regular receiver's certificate or receipt. The district attorney demurred to the petition. The court said:

"The causes in demurrer are the same as those that were argued and determined in Jones *v.* U. S. (35 Fed. Rep., 561), decided in this court on July 16th, 1888, in which it was held that an applicant for lands under the timber act of 1878 becomes the purchaser thereof when he makes the prescribed proof to the satisfaction of the register and pays the prescribed price therefor, and when the certificate of purchase is issued to the applicant the land described therein becomes his property—the bare legal title is all that remains in the vendor in trust for the vendee; and if it was the case of a private person, a court of equity would compel him to perform his part of the contract by executing and delivering to the vendee a proper conveyance thereof; and that the claim against the United States for a patent arising on this contract of sale with the petitioner is in its nature enforceable by a suit in equity in this court for specific performance of the same; and this brings the petitioner within the act of 1887, which gives her the right to sue the United States on any claim arising on contract by a suit in equity as if the United States were sueable, which must mean as if the United States were a private person.

"And, also (1), that the land in question is without the territorial jurisdiction of the court; and (2), that this sale under the act of 1878 is not binding on the Government until it is ratified or confirmed by the Commissioner of the General Land Office. * * * As to this second point it is sufficient to say that the statute provides that on *payment of the purchase money* the applicant may be permitted to enter the same * * * and on the transmission of the papers and testimony in the case a patent shall issue. * * * The demurrer is overruled." (Graham *v.* Ry. Co. 1 L. D., 364. 4 Wallace, 219, Witherspoon *v.* Danear.)

In reference to the case of Brill *v.* Stiles (35 Ill., 305), cited *supra*, we beg to call your attention to the fact that in our case our entry "has not been proved to be void," and that until it is shown to have been illegally made, or to have been defeated," that it is legally "binding upon the Government," and that no act of the Government agents can in any way "prejudice our rights."

In reference to the case of Boyce *v.* Danz (29 Mich., 146), cited *supra*, we beg to call your special attention to the decision that "the proofs are to be made to the satisfaction of the register and receiver" and that when so done the Commissioner has no "power to review and reverse their action, *ex parte*." The cross bill alleges that our proofs were declared to be satisfactory.

(7) TENDER.

We do not suppose that it is necessary to insist at any great length that the unvarying law of the land made our tender before the local land officers equivalent to a payment so far as its legal effect went in determining the vesting of the title. But that the point may not be left open, I quote some cases that are directly in point: Tender and refusal are equivalent to performance. (Hepburn *v.* Auld, 1 Cranch, 102.)

A settler who is entitled to complete a purchase by paying the purchase money, and who tenders the sum to the proper officer, does not lose any right by the officer's refusal to receive it. (Lytle *v.* Arkansas, 9 Howard, 333. Wallerton *v.* Snow, 8th Circ. (Kans.), 1882. Harkness *v.* Underhill, 1 Black, 319. 2 Kent's Comm., 1508, 9,) title to personalty passes on the tender. (15 Fed. Rep., 401.)

(8) JURISDICTION.

Learned counsel insists that we are attempting to review or reverse the decision of the Secretary of the Interior, and that this court is without jurisdiction to do such a thing. In support of his position he cites Gaines *v.* Thompson (7 Wall, 352); the

Secretary *v.* McGarrahan (9 Wall, 298); Dacater *v.* Paulding (14 Peters, 497); Ex rel. Dunlap *v.* Black, Commissioner of Pensions (128 U. S., 40), and other cases.

The leading case on this subject is Marbury *v.* Madison (1 Cranch, 137). In this case Chief Justice Marshall drew the distinction between acts which are political in their nature and those which are merely ministerial; and the rule was laid down which has been followed ever since and which controlled in each of the cases cited above. That rule is this: The writ will not be issued where the act is of a political nature, requiring judgment and discretion, but will be issued in all cases where the acts are ministerial. See the very thorough review of the cases by Mr. Justice Bradley in (128 U. S., 44, Dunlap *v.* Black).

In the cases at bar, as we have clearly shown before, the acts complained of are purely ministerial. However, it is sufficient to say in dismissing this point, we are not seeking to review or reverse anybody. We are at suit with the United States itself. After exhausting all our remedies with its ministerial officers, we come now to the judicial officers, as in duty bound and the law directs.

After the land officers have disposed of the question, if any legal rights have been invaded, the aggrieved party may seek redress in the courts. * * * (Litchfield *v.* Register, 9 Wallace, 575.)

"The decisions of this court on this subject establish that the judiciary will not interfere by mandamus, injunction, or otherwise, with the officers of the land department in the exercise of their duties, *while the matter remains in their hands for decision.*" (Johnson *v.* Towsley, 1 Wallace, 72.)

The cross bill shows that these cases have graduated in the land department, and are now taking a post-graduate course in the courts.

IN CONCLUSION,

learned counsel again returns to the word entry, and quotes Assistant Attorney-General Shields and the honorable Secretary of the Interior to the effect that a mere filing is not an entry. However much respect we may have for the opinion of these high functionaries, we have shown by abundant authority before that their opinions are not controlling in the courts. They cite, it is true, many cases, but the books fail to sustain their citations. Their citations treat of vested rights, and not one of them defines the meaning of the word entry as applied to a purchase under the timber act of June 3, 1878, nor even by analogy to it.

Hon. H. M. Teller, when Secretary of the Interior, came nearer defining it than any of his predecessors or successors. He says in Graham *v.* Ry. Co. (I Land Dec., 364), "in the light of the judicial interpretation of the term 'entry' as it is used in the public land laws, I am constrained to the opinion that an *entry of record*, which on its face is valid, is such an appropriation of the land covered thereby as to reserve the same from the operation of any law, grant, or sale, until a forfeiture is declared and the land restored to the public domain in the manner prescribed by law."

The filings of these men were "entries of record" and their subsequent acts, including tender of the purchase money, clinched the entry and made it as complete as was in their power to make it. That they went no farther was not their fault. They complied with the law on their part. They did all they could do.

The Government, the defendant in the cross bill, prevented them from getting a proper certificate of the entry and purchase. If they had obtained this certificate it would and could have recited no more than the acts already done.

"EQUITY REGARDS AS DONE THAT WHICH OUGHT TO BE DONE."

The demurrer admits the performance of the acts on our part and the refusal on defendant's part. The allegation is of a flat, bare refusal, without palliation and without excuse. No defense is even hinted at in the cross bill by way of pretense. We are not met by any weak point in the allegations of our bill, but by a brutal act of Congress, which they say has effectually wiped out our purchase and turned our property into a public park, in a district of cliffs and canyons that would tax the agility of a mountain sheep to reach it if it had not been made accessible by our labor and money. We are coolly told that we are not in the *proviso*. When the bill was on its passage we were told to be quiet; our rights were all recognized and preserved as *bona fide* entrymen. Now we are told that Congress intended no such thing. Judicial interpretation is appealed to for the purpose of committing a fraud upon these men.

"The quality of mercy has not been strained" by the heads of department who now beg to be shielded from the search light of a court of equity.

We are not asking for mercy, however; we want justice and equity. In this hope we submit our cause to the judgment and conscience of this honorable court.

HENRY C. DILLON,
Attorney for Complainant in the Cross Bill.

EXHIBIT No. 4.

THE PERSECUTION OF KAWEAH.

In the trial of the trustees of the Kaweah Colony on a charge preferred by the United States postal authorities of using the mails for purposes of fraud, after the examination of six witnesses for the prosecution (thirty witnesses had been subpœnaed for the Government), the farce was brought to a conclusion on the fourth day of the trial by U. S. District Attorney Allen, who addressed the court as follows:

The following is an extract from the stenographer's report of the trial:

"DISTRICT ATTORNEY ALLEN. Your honor, I have none but cumulative evidence yet to bring in, and I leave it to the court to say whether such would be sufficient to warrant your honor in permitting it to go to the jury. My official position is such that it is my duty, in the exercise of an honest and sound discretion, when I am satisfied that the Government cannot honestly ask for a conviction, to say so in a manly way. I will leave it for the court to say whether or not, if that cumulative testimony be introduced, a case is made out by the Government.

"H. C. DILLON, attorney for the defendants. May it please the court, on behalf of the defendants I wish to express my deep and sincere gratitude for the manly words that have been spoken by the U. S. attorney. Assuming that the Government here rests its case, I move your honor to instruct the jury to acquit the defendants.

"The COURT (Judge Ross). There is no testimony going to show that these defendants entered into a fraudulent scheme; there no is evidence going to show that there was fraud on their part; nothing to show that they appropriated any of the funds, or intended to do so. The evidence is insufficient to justify a verdict of guilty; and the Government, having an honest representative, admits it through its district attorney. Gentlemen of the jury, the court instructs you to return a verdict of not guilty without leaving your seats."

In the course of the trial it was developed by the witnesses for the prosecution that the defendant Martin, secretary of the colony, had paid bills of the colony amounting to fifteen hundred sixty dollars ($1,560.00) in excess of any receipts by him on colony account.

The Los Angeles Express of Friday, May 6th, contains the following: "The case of the Government against the Kaweah colonists flattened out to-day till the edges curled up. In fact, after District Attorney Allen had a ruling made against him on a point of law, he told the court that all the evidence he could introduce further for the Government would be merely cumulative and corrobative of what was already in. Judge Ross thereupon told him that what had been shown was not sufficient to sustain the indictment and he instructed the jury to acquit the defendants, which they did and the five colonists were turned free."

EXHIBIT No. 5.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 23, 1892.

I, Thomas H. Carter, Commissioner of the General Land Office, do hereby certify that the annexed copy of office letter dated February 25, 1891, is a true and literal exemplification, as shown by the records of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

THOMAS H. CARTER,
Commissioner of General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 25, 1891.

The Honorable the SECRETARY OF THE INTERIOR:

SIR: I have the honor to acknowledge receipt of Department letter of the 12th instant, transmitting copy of opinion of the assistant attorney-general relating to the action of certain members of the so-called Kaweah Colony in California, who have filed timber land applications under the act of June 3, 1878 (20 Stat., '89), upon certain lands now embraced in one of the reservations ("Sequoia National Park") created by acts of Congress approved Sept. 25 and Oct. 1, 1890, and who it is alleged are committing timber trespass upon said lands.

You call my particular attention to the views of the assistant attorney-general, expressed on page 10 of his opinion, relative to the status of the entries and filings on the lands now embraced in said reservation, and direct me to report "as soon as possible the different sections falling under the different classifications made, with a view to have the proper remedy made."

The classifications mentioned by the assistant attorney-general are (1) lands covered by final entries; (2) lands covered by filings, and (3) lands covered by completed homestead entries.

In order to fully comply with your instructions, I transmit herewith a list of *all* entries and filings, so far as this office has any information, upon lands embraced in the "Sequoia National Park," being townships 15 and 16 south, range 29 E.; townships 15, 16, 17, and 18 south, range 30 E.; and township 18 south, range 31 east, M. D. B. and M., Cal.

This, strictly speaking, is perhaps all that I am required to do, but the affairs of the "Keweah Co-operative Colony" and their doings and alleged misdoings have been so widely published in the newspapers, and so many conflicting statements made public concerning same, that I deem it proper to furnish you with all information in possession of this office relating thereto.

I place little credence upon newspaper rumors that the members of the "Kaweah Colony," or any other persons, are cutting down and removing the "giant trees" from these lands or otherwise damaging or destroying them. The parties who write the articles probably have never visited the lands nor been within 100 miles thereof, and consequently can have no actual knowledge of the common presumption which they boldly record as a fact.

It is undoubtedly true that the parties referred to have cut down and appropriated ordinary saw log and smaller trees from the land, but so far as this office has any information up to the present time they have only appropriated such trees as were actually necessary for their own buildings, improvements, etc, and have not cut any for sale or disposal. They have certainly not cut down any "giant trees"—the minimum size of which the special agent reports as 45 feet in circumference—as they can not safely be felled by any of the ordinary methods in use, and no ordinary sawmill could manufacture them into lumber or other timber product.

I transmit herewith copy of an article published in the New York Sun, Dec. 31, 1890, and of a letter from J. C. Weybright, dated Sanel, Cal., Dec. 20, 1890; also the original reports of Special Agents B. F. Allen and Andrew Cauldwell on their personal investigation of the lands in question, and the operations of the "Kaweah Colony," all of which indicate that the purpose of these colonists is of a lawful and laudable nature, and that instead of damaging the lands or destroying the "giant trees" thereon, they have expended about $100,000 in improving the lands and adding to their value, and have guarded and protected the "giant trees" for over five years, saving them from damage and possible destruction from forest fires on many occasions.

I have read carefully the opinion of the assistant attorney-general as to the legal status of the timber-land applications filed by members of the Kaweah Colony and others upon the lands now covered by the reservation. He holds "that parties who have not made entries of said lands, but have merely made filings thereon and are cutting timber therefrom, should be considered trespassers and removed from the reservation," and does not approve of either of the methods suggested by this office with a view to the final disposition of the filings of record, viz, to order hearings to establish the question as to their bona fides or to reject the filings subject to appeal.

The decisions cited by the assistant attorney-general, while they relate to filings in general, do not appear to fully cover the particular cases in question. There seems to have been some element in each case cited foreign to the case now under consideration. There was some question as to the status or character of the lands, or some adverse right or claim had attached or was in dispute, or the claimants had not complied with all of the requirements of the law. None of these questions are at issue in the present cases. The lands were surveyed, unappropriated, and uninhabited public lands, valuable chiefly for timber, and subject to entry under the act of June 3, 1878 (20 Stat., 89); the claimants filed their applications, submitted proof, tendered the purchase money, and in every way complied fully with all the requirements of law. In the case of Wirth *vs.* Branson (98 U. S., p. 118) the Supreme Court said:

"The rule is well settled by a long course of decisions that when public lands have been surveyed and placed in the market or otherwise opened to private acquisition, a person who complies with all the requisites necessary to entitle him to a patent in a particular lot or tract is to be regarded as the equitable owner thereof and the land is no longer open to location. The public faith has become pledged to him, and any subsequent grant of the same land to another party is void, unless the first location or entry be vacated or set aside."

The Department in the case of "Heirs of William French" (L. D., Vol. 5, p. 38), referring to above decision, held that where an applicant for timber lands under the act of June 3, 1878 (20 Stat., 89), had done all that he was required to do under the law, and had tendered his money, the tender of the money, so far as the applicant's rights are concerned, was equivalent to the actual payment of the same.

I most respectfully call your particular attention to the material distinction made by the Supreme Court between the case of Frisbie *vs.* Whitney (9th Wall., p. 194), where the claimant was unable to fulfill all the requirements of the law, but "did all that was in the power of anyone to do" in the premises; and the case of Wirth *vs.* Branson (98 U. S., p. 118), where the claimant not only did all that was in the power of anyone to do, but complied fully "with all the requisites necessary to entitle him to a patent." That is precisely what these parties did. So far as they are concerned they complied fully with all the requirements of the law, and the default in carrying the claims to patent is through failure of the Government to act in the premises.

The list transmitted herewith of timber-land filings made by the supposed members of the Kaweah Colony in Tps. 15 and 16 south, ranges 29 and 30 east, shows that the applications were filed between Oct. 5 and Oct. 30, 1885; that the orders of the Commissioner of the General Land Office suspending the lands in said townships from entry or filing were issued Dec. 2, 1885, by telegram, and Dec. 24, 1885, by letter; that the parties submitted proof and tendered payment for the lands between Dec. 29, '85 and Jan. 19, '86, and that they appealed from the action of the register and receiver in refusing to accept their money and make their entries of record between Jan. 18 and Jan. 20, 1886.

At the time the parties filed their applications the lands were not suspended from entry or filing or reserved in any way, and were legally subject to such filings under the act of June 3, 1878 (20 Stat., 89), but before the expiration of the sixty day's publication required by said act, for the *sole* purpose of permitting adverse claims to be filed, if there be any, the orders of the Commissioner of the General Land Office were issued suspending the entire townships named, and others, from entries or filings. No adverse claims have been filed for any of said lands up to date hereof, so far as this office has information, and if the suspension of the Commissioner of the General Land Office had been removed at any time prior to the reservation of these lands by the act of Congress, the claims of these parties would undoubtedly have been allowed, their money accepted, their entries allowed as of date of making proof and tendered payment, and their rights attach *from date of filing their applications.* It seems clear to me that the filing of these applications and the subsequent submission of final proof and tender of money prior to reservation of the lands by Congress vested the parties with an inceptive right to the lands which the Government is bound to recognize.

The suspension of these townships from entries and filings was based upon a supposition of fraud or irregularities in the surveys, and a presumption of fraudulent entries thereon. Over five years have elapsed since the suspension was made and up to date hereof no positive evidence has been secured to substantiate the allegations of fraud either in the surveys or entries of the lands, nor to prove that there were good and sufficient grounds to warrant the suspension. But even if the suspension was in every way justifiable it could not and did not deprive the claimants of any rights which they may have acquired. It simply held them in abeyance.

There can be no question as to the right of the Commissioner of the General Land Office to suspend from *original* entries and filings any portions of the public lands for reasons which, to him, appear sufficient and for the public good. But such suspension can only take effect from and after the date thereof; it can not be retroactive, and it is a question whether it could apply to and estop action on entries or filings legally initiated prior thereto, in which the parties were proceeding in strict accordance with and under authority granted them by Congress, and in which no adverse claims have been filed without granting them a hearing or giving them any recourse whatsoever in the matter.

I have no dispositon nor desire to shield or attempt to shield any man or association of men who are engaged in attempting to acquire public lands by fraudulent or illegal methods; but common justice demands that no man should be adjudged guilty of such actions upon mere allegations or ex parte evidence. Any of the individuals who, while the lands were legally subject to entry under the act of June 3, 1878 (20 Stat., 89), made affidavits and filed applications under said act to purchase lands now embraced in said reservation, did so in good faith and in the proper and regular manner provided by law; and if they acquired any rights whatever thereby their claims are entitled to full and careful consideration by the Government and should not be ignored upon any mere technicality. The rights of each individual should be respected and protected; and no honest, *bona fide* claimant should be compelled to suffer for the wrongdoings of others, nor should any association or individual be permitted to acquire rights which justly and legally belong to such claimant.

I fully appreciate the public necessity of protecting the "giant trees" and other natural wonders in the reservations created by acts of Congress, and of removing all intruders therefrom. I have no sympathy with syndicates or associations who attempt to acquire public lands by fraud or in evasion of the law; but individuals, even though the innocent dupes or tools of such, who have in good faith attempted to acquire rights granted them by law, and who have expended their money and hard labor in trying to acquire such rights, have my full sympathy.

All of the claims of the same character to lands in the townships now embraced in the "Sequoia National Park" must stand upon the same footing. It may be that some of the filings are fraudulent or illegal in their inception; but there is no proof of such on record. On the face all the claims appear to be bona fide and to have been made in absolute good faith, and the requirements of the law fully complied with so far as the applicants are concerned.

I transmit herewith letter of Geo. H. Bodden, dated Visalia, Cal., Sept. 27, 1890, enclosing the sworn statement of a number of persons who have filed timber-land applications for certain lands in township 17 south, range 30 east (not within the so-called "Kaweah Colony" settlement), in which they claim that they each made their entries in entire good faith for the use and benefit of the entrymen and not for the use and benefit of any other person or persons. They further claim that *there are no giant or mammoth trees in said township*, and they offer to pay the expense of an investigation to establish that fact. The county officers of Tulare Co., Cal., certify that the men who made the statements are reputable citizens and enjoy the confidence and esteem of the community. There is nothing in this office to show that these men are members of or in any way connected with the "Kaweah Colony."

It seems to me that every one of the persons who filed an application under the act of June 3, 1878 (20 Stat., 89), in the manner indicated, and proceeding in accordance with the provisions of said act, submitted proof and tendered the purchase money for the land prior to reservation thereof by Congress, is entitled to a hearing, and if he can positively establish his bona fides under said act, he is entitled either to a patent or to have his land condemned for public use, and proper appropriation made by Congress to indemnify him for his labor and money expended.

My only object in entering into the subject so fully is to positively and permanently settle all question as to title to the lands in question, and to secure *all* of the lands reserved by acts of Congress approved Sept. 25 and Oct. 1, 1890, for the purposes designed by said acts.

In your letter of the 12th instant you further direct: "You will also report whether, if you know, these colonists have combined to place their titles in the hands of a single corporation."

In reply thereto I have to state that all the information this office has on that subject is contained in the report of Special Agent Cauldwell of July 16, 1890, and the affidavits submitted therewith (original herewith). Your attention is respectfully called to the following extract therefrom:

"I have to report that I have found it a difficult matter to determine exactly how many of the claimants have quit-claimed or assigned their claims to the Colony Company.

* * * * * * * *

"I am also satisfied that nearly all of those timber entrymen who made these quit-claim deeds did so through a misinterpretation of the law, their attorney having advised them that having once tendered their final proof and money in payment for their land they could subsequently deed their equity in their claims to the Colony company, notwithstanding the fact that the land office had refused to receive their proof and money."

The several papers refered to as being transmitted with this report are as follows:

List of entries and filings on lands covered by the "Sequoia National Park," being townships 15 and 16 south, range 29 east; townships 15, 16, 17, and 18 south, range 30 east, and township 18 south, range 31 east, M. D. B. and M., Cal.

Copy of article relating to the "Kaweah Colony," published in the New York "Sun," Dec. 31, 1890.

Copy of letter from J. C. Weybright, dated Sanel, Cal., Dec. 20, 1890. File No. 1891-5364.

Report of Special Agent B. F. Allen, dated Oct. 22, 1889. File No. 1889-128775.

Report of Special Agent Andrew Cauldwell, dated July 16, 1890. File No. 1890-91648.

Letter of Geo. H. Bodden, dated Visalia, Cal., Sept. 27, 1890, transmitting sworn statements of certain parties who have filed timber-land applications in township 17 south, range 30 east. File No. 1890-121950.

In addition to the above-mentioned papers, I have the honor also to transmit herewith the following-described papers relating to the cases in question:

Letter from Frederick Scrimshaw, dated Brooklyn, N. Y., Feb. 2, 1891, transmitting copy of a petition to Congress, signed by prominent officials of the city of Visalia and Tulare County, Cal., praying for a repeal of the act of Congress reserving townships 15 and 16 south, ranges 29 and 30 east, *for a national park*. File No. 1891-16980.

Appeal and affidavits submitted by B. G. Haskell, attorney for the claimants, through Special Agent Andrew Cauldwell. File No. 1891-19126.

Appeal and brief forwarded by B. G. Haskell, attorney for P. R. Martin *et al.* File No. 1891-20629.

As I have retained no copies of the original papers transmitted herewith, I most respectfully request that they be returned to me with your directions in the premises.

Very respectfully,

LEWIS A. GROFF,
Commissioner.

EXHIBIT No. 6.

Copy of register's and receiver's certificate as to act done in Visalia land office by Haskell et al., 1885.

VISALIA, TULARE CO., CAL.,
January 13, 1891.

To whom it may concern:

We, the undersigned, who were the register and receiver of the United States land office at Visalia, California, at the dates and times named below, and who were familiar and cognizant with the workings of the office during said period, do certify as follows concerning the timber entries made by the persons whose names are given below:

That on the 5th, 6th, 7th, and 30th days of October, A. D. 1885, the parties below named, under the provisions of and as required by the act of June 3, 1878 (20 Stat., 89), made affidavit before the undersigned, then register, showing that each of them desired to avail themselves of the provisions of said act for the purchase of the lots of land respectively set opposite the name of each said applicant, to wit:

Filing number	Name.	Description.
169	P. R. Martin	SE. ¼ of Sec. 1, T. 16 S., R. 29 E., Oct. 5, 1885.
193	J. G. Wright	SE. ¼ of Sec. 26, T. 15 S., R. 29 E., Oct. 30, 1885.
190	Andrew Larsen	SW. ¼ of Sec. 25, T. 15 S., R. 29 E., Oct. 30, 1885.
189	P. N. Knes	SE. ¼ of Sec. 3, T. 16 S., R. 29 E., Oct. 30, 1885.
201	P. Jorgensen (not appealed)	SE. ¼ of Sec. 34, T. 15 S., R. 29 E., Oct. 30, 1885.
191	W. T. Angelo (not appealed)	NE. ¼ of Sec. 34, T. 15 S., R. 29 E., Oct. 30, 1885.
200	Alfred Fuhrman (not appealed)	N. ½ of SW. ¼, S. ½ of NW. ¼ of Sec. 3, T. 16 S., R. 29 E., Oct. 30, 1885.
198	Michael Burke (not appealed)	NE. ¼ of Sec. 3, T. 16 S., R. 29 E., Oct. 30, 1885.
199	Thomas Markusen	NW. ¼ of Sec. 35, T. 15 S., R. 29 E., Oct. 30, 1885.
197	Martin Schneider	E. ½ of NW. ¼, E. ½ of SW. ¼ of Sec. 34, T. 15 S., R. 29 E., Oct. 30, 1885.
186	Warren C. Bennett	SE. ¼ of Sec. 17, T. 15 S., R. 30 E., Oct. 7, 1885.
171	W. J. Cuthbertson	NE. ¼ of Sec. 2, T. 16 S., R. 29 E., Oct. 5, 1885.
168	Frank Thomas	NW. ¼ of Sec. 1, T. 16 S., R. 29 E., Oct. 5, 1885.
184	Andrew Fleig (not appealed)	NW. ¼ of Sec. 21, T. 15 S., R. 30 E., Oct. 6, 1885.
185	J. A. Samstag (not appealed)	SE. ¼ of Sec. 36, T. 15 S., R. 29 E., Oct. 6, 1885.
196	Richard Corbett	NE. ¼ of SE. ¼ of Sec. 33; W. ½ of SW. ¼ of Sec. 34, and SW. ¼ of NW. ¼ of Sec. 34, T. 15 S., R. 29 E., Oct. 30, 1885.
195	Edward H. Crangle	W. ½ of NE. ¼, SE. ¼ of NE. ¼, NE. ¼ of SE. ¼, of Sec. 4, T. 16 S., R. 29 E., Oct. 30, 1885.
194	E. W. Carpenter	NE. ¼ of NE. ¼ of Sec. 4; N. ½ of NW. ¼ of Sec. 3, T. 16 S., R. 29 E., Oct. 30, 1885; and SE. ¼ of SE. ¼ of Sec. 33, T. 15 S., R. 29 E., Oct. 30, 1885.
192	William Davis	SW. ¼ of Sec. 26, T. 15 S., R. 29 E., Oct. 30, 1885.
174	Burnette G. Haskell	SW. ¼ of Sec. 2, T. 15 S., R. 29 E., Oct. 30, 1885.
172	Henry Miller	NW. ¼ of Sec. 3, T. 16 S., R. 29 E., Oct. 5, 1885.
173	H. von Sohnen	SE. ¼ of Sec. 2, T. 16 S., R. 29 E., Oct. 5, 1885.
176	P. M. Narbee	NW. ¼ of NE. ¼, S. ½ of NE. ¼, SE. ¼ of NW. ¼ of Sec. 6, T. 16 S., R. 30 E., Oct. 5, 1885.
175	Jasper N. Bowhay (not appealed)	E. ½ of NW. ¼, N. ½ of SW. ¼ of Sec. 8, T. 16 S., R. 30 E., Oct. 5, 1885.
177	Edgar W. Lee (not appealed)	SW. ¼ of Sec. 6, T. 16 S., R. 30 E., Oct. 5, 1885.
178	J. W. Raymer	NE. ¼ of Sec. 8, T. 16 S., R. 30 E., Oct. 5, 1885.
179	R. Butterfield	NE. ¼ of Sec. 5, T. 16 S., R. 30 E., Oct. 6, 1885.

Filing number	Name.	Description.
180	J. J. Martin	SE. ¼ of Sec. 6, T. 16 S., R. 30 E., Oct. 6, 1885.
200	J. W. Briggs	S. ½ of NE. ¼, N. ½ of SE. ¼ of Sec. 11, T. 16 S., R. 29 E., Oct. 6, 1885.
182	A. Prothero (not appealed)	SW. ¼ of Sec. 25, T. 15 S., R. 29 E., Oct. 6, 1885.
147	Jas. B. Johnson	SE. ¼ of Sec. 19, T. 45 S., R. 30 E., Oct. 5, 1885.
148	W. C. Owen	SW. ¼ of Sec. 19, T. 15 S., R. 30 E., Oct. 5, 1885.
149	H. C. Weissman (not appealed)	NE. ¼ of Sec. 20, T. 15 S., R. 30 E., Oct. 5, 1885.
150	Theodore Johnson	NW. ¼ of Sec. 20, T. 15 S., R. 30 E., Oct. 5, 1885.
159	John Zobiest (not appealed)	SW. ¼ of Sec. 30, T. 15 S., R. 30 E., Oct. 5, 1885.
146	H. T. Taylor	NE. ¼ of Sec. 19, T. 15 S., R. 30 E., Oct. 5, 1885.
145	W. Braddock	SE. ¼ of Sec. 25, T. 15 S., R. 29 E., Oct. 5, 1885.
157	Joseph Lang	NW. ¼ of Sec. 30, T. 15 S., R. 30 E., Oct. 5, 1885.
153	E. P. L. Lee (not appealed)	SW. ¼ of Sec. 20, T. 15 S., R. 30 E., Oct. 5, 1885.
193	H. J. E. Vaupel	W. ½ of NE. ¼, W. ½ of SE. ¼ of Sec. 29, T. 15 S., R. 30 E., Oct. 5, 1885.
166	O. P. Wilson	SW. ¼ of Sec. 28, T. 15 S., R. 30 E., Oct. 5, 1885.
154	Rasmus Neilson (not appealed)	NW. ¼ of Sec. 29, T. 15 S., R. 30 E., Oct. 5, 1885.
155	James K. Phillips	SW. ¼ of Sec. 29, T. 15 S., R. 30 E., Oct. 5, 1885.
158	Joseph Kelly	NE. ¼ of Sec. 30, T. 15 S., R. 30 E., Oct. 5, 1885.
165	Joseph Dentz	NW. ¼ of Sec. 32, T. 15 S., R. 30 E., Oct. 5, 1885.
156	John Reardon (not appealed)	N. ½ of SE. ¼, SW. ¼ of SE. ¼ of Sec. 30, T. 15 S., R. 30 E., Oct. 5, 1885.
160	Simeon Stetson	NE. ¼ of Sec. 31, T. 15 S., R. 30 E., Oct. 5, 1885.
161	Chas. F. Keller	SE. ¼ of Sec. 31, T. 15 S., R. 30 E., Oct. 5, 1885.
167	R. A. Gillride	NE. ¼ of Sec. 1, T. 16 S., R. 29 E., Oct. 5, 1885.
162	Jno. D. Golden	NW. ¼ of Sec. 31, T. 15 S., R. 30 E., Oct. 5, 1885.
163	L. A. Rockwell	SW. ¼ of Sec. 31, T. 15 S., R. 30 E., Oct. 5, 1885.
164	Fred. Zubler	NE. ¼ of Sec. 32, T. 15 S., R. 30 E., Oct. 5, 1885.
151	Chas. McFarland	SE. ¼ of Sec. 20, T. 15 S., R. 30 E., Oct. 5, 1885.

Total number of claims	53
Number not appealed	14
Number appealed	39

That the said lands had been surveyed, and official plats of such surveys filed in the local land office on or before the 3rd day of April, 1884, and were, at the date of the application to purchase as aforesaid, open to sale and entry under the provisions of said act.

The said affidavits thus filed were upon the regular prescribed form and set forth in each case that the applicant was a citizen of the United States or had declared his intention to become such; that he was over the age of twenty one years; that the said lands were unfit for cultivation and valuable chiefly for its timber; that it was uninhabited; that it contained no mining improvements whatever, nor, as he verily believed, any valuable deposit of gold, silver, cinnabar, copper, or coal; that he had made no other application under said act; that he did not apply to purchase the land above described on speculation, but in good faith to appropriate it to his own exclusive use and benefit; and that he had not, directly or indirectly, made any agreement or contract in any way or manner with any person or persons whomsoever by which the title he might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself. That said affidavit was made as required by law in duplicate.

That thereupon the undersigned register did, as required by law, post a notice of each said application in the said United States land office at Visalia for a period of sixty days, and furnished to each said applicant a copy thereof for publication in the newspaper published nearest the location of the land.

That on the —— day of December, 1885, the day appointed, each said applicant furnished to me, said register undersigned, satisfactory evidence that said notice was duly published as required by law; such evidence consisting of a copy of the printed notice, and attached thereto an affidavit from the publisher having charge of the newspaper in which said notice was published, and giving dates of first and last insertions.

That on the same day the said applicants presented proof from at least two disinterested witnesses that the land was of the character contemplated in the act, unoccupied, and without any improvements. That it apparently contained no valuable deposits of gold, silver, cinnabar, copper, or coal.

That at said hearing no contestants nor objectors appeared.

That in addition thereto each applicant presented a supplemental affidavit reciting again the facts of his first affidavit made in the filing, in order to show that he had not in the interval incumbered said land nor made any agreement nor contract so that it would benefit anyone else. And, finally, that the money tendered in payment was veritably his own and not borrowed for the purpose upon said land.

That on the same day each said applicant tendered to the undersigned, the receiver, the full sum of four hundred and ten dollars in actual gold coin of the United States, that amount being the price of said land—one hundred and sixty acres each, at two dollars and a half per acre, plus the legal fees of the land office.

That these proofs thus made, together with the aforesaid tender, covered the requirements exacted by law, and that completion of purchase was denied to the said parties because of the following telegram from the honorable Commissioner of the General Land Office:

"WASHINGTON, D. C., *Dec. 2d, 1885.*

"REGISTER AND RECEIVER,
"*Visalia, Cal.:*

"Allow no entries for filings in land in townships 15 and 16 south, range twenty-nine, thirty, and thirty-one east, Mount Diablo meridian, until further order.

"WILLIAM A. J. SPARKS,
"*Commissioner.*"

That said telegram was received after said claimants had made their filings and publication.

That each of said claimants, except as before noted, duly and regularly appealed from the decision thus rendered by us in refusing said tender and certificate, to the honorable Commissioner of the General Land Office, and within the thirty days allowed by law therefor.

That we are of the opinion that said entries were made in good faith, and that the same should be allowed.

J. D. HYDE,
Ex-Register Visalia Land Office.
TIPTON LINDSEY,
Ex-Receiver Visalia Land Office.

STATE OF CALIFORNIA, *County of Tulare, ss:*

On this 22d day of January, 1891, before me, Melville P. Frasier, a notary public in and for said county and State, residing therein, duly commissioned and sworn, personally appeared J. D. Hyde and Tipton Lindsey, known to me to be the persons described in and whose names are subscribed to the annexed instrument, and they acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.]

MELVILLE P. FRASIER,
Notary Public.

EXHIBIT No. 7.

THE PERSECUTION OF KAWEAH.

STORY OF A GREAT INJUSTICE.

[Published by the Eastern Group of the Kaweah Co-operative Colony Company. Secretaries: Ralph W. Pope, 13 W. 31st St., New York; F. Scrimshaw, 46 Chester St., Brooklyn, N. Y. P.O. Box 567, New York City.]

"*Provided, however,* That nothing in this act shall be construed as in any wise * * * affecting any bona fide entry of land made within the limits above described under any law of the United States prior to the approval of this act." *Proviso of the bill of October, 1, 1890. (See Congressional Record, Vol. 21, No. 240, page 11684, second column.)*

"It is not proposed in any manner to interfere with the rights of settlers or claimants, or with any part of the tract heretofore in any manner disposed of. The committee, therefore, recommend the passage of the bill."

(Conclusion of the report of the Committee on Public Lands in recommendation of the bill of October 1, 1890. See Congressional Record, Vol. 21, No. 240, p. 11685, first column.)

PREFACE.

This presentation of a case of gross injustice against a body of people, whose only sin seems to be that of setting an example of social and industrial equity, might easily have been expanded to the dimensions of a volume; but we are content to give only its salient points, confident that it will be quite sufficient to arouse the instinct of justice that is still strong in the hearts of the great body of the American people.

Our cause is the cause of labor, and the hosts of toilers throughout the country, through whose heart the ir[illegible] monopolistic oppression is being to-day so cruelly driven, ought to rejoice in t[illegible]portunity of taking up the gage of battle so insolently flung at us.

To show that the Kaweah ou[illegible]e is but an instance of what seems to have been adopted as a Government *policy*, [illegible] cite a similar outrage, the knowledge of which reaches us as this pamphlet goes to press.

"Some time ago the Commissioner of the General Land Office sent a dispatch to the local land office for the Lake County, Cal., district, as follows:

"Allow no more entries or disposals of lands within two statute miles of the borders of Clear Lake, Lake county, Cal., in the several townships in which the lake is situated, as the lake has been selected and reserved as a reservoir site.'

"This dispatch threw a large number of settlers, whose claims to the lands they had settled upon were not yet perfected, into great confusion and excitement, in like manner as the action of the Interior Department toward the Kaweah settlers has done. It was rumored that the Government would dispossess them and that they would have to fight the matter in the courts. These settlers being poor the expenses of defending their claims against the Government amounts in effect to confiscation. They must either lose their land by default or pay as much as their land and improvements are worth to lawyers to defend them against the Government.

"A Lake County paper says as follows in regard to the law in the matter:

"'The telegraphic order of the Commissioner has proven a puzzle to the lawyers. Nobody in the legal profession is aware of any authority, constitutional or congressional, by which a commissioner of the General Land Office can suspend the operation of the land laws of the country with reference to the citizens in any special part of it. To forbid the "entries or disposals of lands within two statute miles of the borders of Clear Lake" means, of course, that the settlers who, under the existing land laws, have settled there and acquired vested rights, are now forbidden to perfect their title. Though the bulk of Government land within those limits has been long since sold, the records of the Land Office show that there are over forty settlers within two miles of Clear Lake who have been engaged, many of them for five years, in improving their claims under the protection afforded by the homestead and pre-emption laws.

"'It is preposterous,' said M. D. Hyde, the well-known land lawyer,' to suppose that the Interior Department would interfere with the vested rights of settlers. *The Government has always regarded settlers who live on their land and cultivate it in good faith as just as much the owners of it as though they had already perfected title. If the homestead, the preëmption, and other land laws can be arbitrarily suspended around Clear Lake they can be suspended in any part of the United States.* Law would be inoperative and confiscation the rule. No, in my opinion, you will find out that this order of the Commissioner has been sent out under some misapprehension.

"The above has been the rule of procedure and the spirit of the law regarding actual settlers. It was not until quite recently that the rights of settlers have been set aside to favor corporations and monopolies. The country is boiling all over with indignation at the injustice that has been done to the toilers by the present monopoly-ridden administration. We shall see what the next Congress will have to say about it. The people are coming to the front and intend to be heard. The signs of the times are unmistakable."

Like as a secret imbiber of whisky will sometimes be found spouting the words of temperance, to the scandal of honest people, so do the words of the Government not agree with the outrageous acts here presented. For in the New York *Recorder* of June 28, 1891, there appeared a very edifying editorial signed by John W. Noble, reciting at length as "among the many good and weighty reasons which are advanced for the continuance of the Republican party in power," "its course in regard to the public lands in the far West." He points with pride to the fact that all blessings in the way of land grants to the homesteader, the abolition of all red tape between the Land Office and the "honest settler," and the quick and favorable decisions invariably rendered in his case—in short, the complete coronation of the poor man with all his landed rights—flow from the Republican party, and that from the Democratic party the "honest settler" never got anything but vexatious delays and "exceedingly slow and complicated" procedure.

As proof of this anxious and ever vigilant solicitude of the Republican party for the rights of the "honest settler," he says that "in Washington, in North and South Dakota, in Montana, in Idaho, and in Wyoming, the people are aware of what the Republican party *at all times*, and *especially under the administration of Gen. Harrison*, has done for them in this respect, and they will not forget it."

Perhaps Mr. Noble did not notice the slight omission he made in forgetting to mention "what the Republican party . . . especially under the administration of Gen. Harrison, has done" for "the honest settler" in *California;* but he can rest assured that the irritated and exasperated people *there* "will not forget it."

On September 12 the New York Tribune editorially reviewed what it alleges to have been the great reform in the Land Office during the Republican administration, and also claims, like Secretary Noble, that the Republican party has done everything of justice to the settler, and that to the Democratic party no credit is due for anything good. The following pages will show that even the Republican party can go the Democrats one better in outrageous injustice.

All those who desire to check this attempt to override the rights of citizens of this so-called free country should not only procure copies of this pamphlet for distribution, but help, be it by ever so little, to swell our "defense fund," to enable us to establish our rights in the courts. Contributions may be sent to

J. J. MARTIN,
Secretary, Visalia, Cal.

THE PERSECUTION OF KAWEAH.

HOW SETTLERS ARE TREATED IN CALIFORNIA.

The contrast between the welcome extended to settlers by the Mexican Republic and the injustice measured out in this great Republic of the United States by the United States Government to American citizens seeking to establish homes for themselves on their own native soil, is so great as to make lovers of liberty everywhere hang their heads in shame when they become acquainted with the facts, as shown by the history of different groups of settlers in the West, and especially by that of the Kaweah colonists of Tulare County, California.

In Mexico, in order to *attract* settlers, lands are granted, customs duties are remitted, exemption from taxation is allowed for a term of years, and every inducement is held out to them. But here, in the United States, whose Republic is held up as a model to the admiration of the whole world, settlers who have devoted years of hard work, and invested all their savings, to establish homes for themselves on Government lands; who have complied with every requirement of every law, comported themselves as model citizens, made valuable improvements, instituted useful industries, and organized a law-abiding community, whose virtue, intelligence, sobriety, and industry have won the confidence and respect of the whole country around (see Appendix, p. 32), are attacked and annoyed by unjust legal processes instituted against them under the specious pretext of carrying out the provisions of an act smuggled through Congress during the last minutes of an exciting session, by the agents and in the interest of a monopoly—legal processes whose real aim and purpose is to dispossess them of their natural and legal rights guaranteed them by the laws of the United States and reaffirmed by recent decisions of the United States courts.

That this is but a plain statement of facts, the following brief description of the case of the Kaweah Colony will show beyond a doubt to anyone who will consider the matter patiently and then examine the appended documents, which will substantiate every word. Then, having read this appeal, let everyone who claims to possess a sense of justice ask himself or herself whether it be not high time to call a halt to these encroachments upon the rights of the individual, if any respect is to be maintained for the statutes of the country in which we live, or for the officers who are entrusted with the execution of the laws.

In 1884, a number of people, residents of California, earnest believers in the theory of coöperation, wishing to make a practical test of the same, examined different sites in that State, with a view to discovering a locality which should combine the requisites of healthful climate, cheap and fertile land, natural wealth, and efficient water power.

After careful investigation, they decided to locate on Government land on and near the north fork of the Kaweah River, in Tulare County, California, and, accordingly, took up individual claims under the timber act of June 3, 1878 (20 Stat., 89), and filed their claims, forty-five in number, between the 5th and 13th of October, 1885.

The timber act provides for a probationary period of sixty (60) days, "for the sole purpose of permitting adverse claims, if any, to be filed." (See Report of Land Commissioner Groff, February 25, 1891, Appendix, p. 36.) The then Land Commissioner, Sparks, exercising the power confided to him by Congress, and suspecting, from the large number of entries simultaneously made, that some great monopoly was behind this, as the instigators, to obtain Government lands by fraudulent appropriations, sent a telegram, dated December 2, 1885, to the local land office, followed on December 24 by a letter, ordering a suspension of action on these claims, *solely on the ground that he doubted the bona fides of the would-be settlers.*

Commissioner Sparks justified this suspension by the notorious fact that at that time, and for many years previous, "the public domain was being made the prey of unscrupulous speculation and the worst forms of land monopoly, through systematic frauds carried on and consummated under the public-land laws," and because he held it to be his duty to "withhold * * * final action until examinations could be made, and the false claims separated from those that were valid."

Right at this point let it be noted that the suspension did not and could not affect the rights of the settlers unless fraud or lack of "good faith" could be shown. This view has been held so often by the United States courts and the General Land Office that we will give but two references. They are taken from Land Commissioner Groff's report, February 15, 1891. (*Vide* Appendix, p. 35, ¶ 3-5.) The cases there cited are "Wirth *vs.* Branson" (98 U., p. 118), and "Heirs of William French" (L. D., vol. 5, p. 38), both recognizing that a full compliance with the law and the tender of money (which no one denies the Keweah settlers have done) entitle the settlers "to be regarded as the equitable owners thereof," etc.

Conscious of the rectitude of their intentions, and reposing confidence in the laws of the nation, to which they had conformed, and unconscious, *at that time*, of any sinister influence at work against them, these individuals, who had since organized themselves into a colony company, proceeded to build a road to communicate with their timber lands, and to improve their homesteads; and for five years they have worked upon these lands, thus showing, beyond the possibility of a doubt, that they were acting in "good faith"—suspicion of which was the only reason, as we have shown, why Commissioner Sparks ordered a suspension of issue of patents.

These timber lands had been pronounced inaccessible. A lumber company, in 1884, sent up engineers to the forest, who reported that, owing to the great altitude and the short distance from the spot where a road would have to commence, it was impossible to build even a wagon road, except at great expense. The lumber company thereupon abandoned the idea of taking up the land, considering themselves perfectly safe from any competition in that direction.

The colonists, however, believed that by coöperative effort a road could be built, and after a full compliance with the law in the matter of their entries in the Land Office, commenced its construction. For over *five years*, reinforced in numbers and money contributed by outside members and friends, they persevered at this work, undiscouraged by the infinite engineering difficulties and personal privation, at the end of which time they had finished a great highway eighteen miles long that is now estimated to be worth at least $150,000.

In the meantime—and particularly when the completion of the road prophesied a competitive supply of lumber in the market—the colonists became aware that some powerful influence was at work delaying the issuing of their patents; but they did not dream of the cunning plans that were being matured to break up their settlement and appropriate the fruits of their labor.

This plan was none other than to hurriedly smuggle through Congress, on September 25, 1890, an act setting aside certain townships "as a public park or pleasure ground for the people." The townships in which the colonists' lands were situated were not included in this bill, presumably for the reason that the colonists would have stirred into the matter in such manner as to have called the attention of Congress to the "nigger in the woodpile." The "job" act was not sprung until the eleventh hour, after which there was no opportunity for investigation before Congress adjourned. This act differed from the original bill in the respect that it was "An act to set apart certain tracts of land in the State of California as *forest reservations*." That this act was railroaded through can be seen from the reports of the passage of the act in the "Congressional Record" of October 1, 1890, on pages 11684-5. (See Appendix, p. 29.) As a proof of the haste with which this act was passed, the map which we have given on page 15 will show that six miles of the boundary inclose nothing, serving only as an index pointing to the west.

The events and circumstances we are now reciting show *why* the passage of this last act was left to the dying moments of the session—that dangerous extremity which is the special opportunity of all vicious legislation. It is significant, and remains patent on the records, that debate on the question was arbitrarily choked off.

As it is intended to call the attention of the next Congress to this specimen of hasty legislation, we would suggest that bills affecting the interests of private parties be published in the county where their interests are located at least *sixty days* previous to action upon them by the Congressional committee having them in charge.

It was naturally expected by those who procured this legislation that it would be all sufficient to break up the colony, and cause the colonists' five years of thrift and industry to fall into the hands of their enemies; for what more easy and natural, after the decease of the colony, than to repeal the act of *reservation*, and permit the lumber monopoly to go right in and devastate these forests—as they always do?

The colonist, instead of getting out, as was hoped and expected by their opponents, pursued the even tenor of their way, relying for ultimate justice on the fact that, from the first moment of filing their claims, they had scrupulously fulfilled every jot and tittle of the requirements of the land and timber laws, and more particularly on the fact that the very act of October 1, so evidently aimed at them, contains this remarkable proviso, viz: "*Provided, however*, That nothing in this act shall be construed as in anywise * * * affecting any bona fide entry of land made within the limits above described under any law of the United States prior to the approval of this act."

From these facts any fair-minded person will see that the colonists were perfectly justified in considering themselves as utterly beyond the scope of the legislation referred to. But as no law was ever known to stand in the way of the money power bent on doing wickedness, so, in spite of this distinctly expressed proviso, the sinister influence that seems to dictate the Interior Department caused the colony trustees, in December, 1890, to be arrested and dragged 300 miles away to Los Angeles on the charge of trespassing and cutting timber on Government land. This charge was heard on December 16 before Commissioner Van Dyke, when the prosecution utterly failed to establish anything more than the fact that at some period LONG PRIOR TO THE ACT OF OCTOBER 1, 1890, the settlers had cut down *five pine trees* to obtain a few boards for a few rude huts for the road workers and a small sawmill. This charge Commissioner Van Dyke, on the ground that the questions raised were so deep and vital, would not decide upon, but held the trustees to answer.

Meanwhile, the agents of this persecution, through the thousands of newspapers forming the associated press, flooded the country with the most sensational lies and exaggerated reports concerning the misdoings of the colonists, and the swindling dishonesty of the trustees—all with the sole purpose of creating a widespread prejudice against them that would be certain to influence any jury.

But, most remarkably, on February 25, 1891, Lewis A. Groff, Land Commissioner at Washington, submitted to Secretary of the Interior Noble, a full and elaborate report concerning the title of the colonists to their lands, in which the Commissioner maintains that the colonists have faithfully complied with every requirement of the land laws, and shows that the General Land Office was possessed of no legal reason why their patents should not be at once issued. (See Appendix p. 37.)

But in spite of this report from the Government official whose business it was to be familiar with the case; who had, with the assistance of the local land officers, been investigating it for very many months, and who was most competent to pass upon it, Secretary Noble, with the promptitude of a man whose mind is made up, rendered, in less than six weeks, a decision in which he has ordered the colonists' entries to be cancelled, on the ground that as their titles have not been *perfected* they have no rights whatsoever as against the United States Government, and for the reason that "Congress, in the exercise of its authority, has made other and final disposition of the lands," which decision is as queer in law as it is unjust in morals.

For a legal deliverance, this decision of the Secretary is about as thin and weak as it is possible to be. Here is a specimen of his style of argument: "Since the very inception of certain of these claims to the lands in question in October, 1885, it has been asserted that the same were fraudulent, and it must be assumed that Congress acted with a full knowledge of all the facts in the case; at all events its action in disposing of the lands is final." That is to say, he *assumes* that Congress has acted legally and rightly; he does not *know*, and, apparently does not care. Again he says in reply to the assertion that the colonists had expended much money on the lands and preserved the large trees, and would suffer great hardship by dispossession, "This was a question for Congress to pass upon, and to afford such relief as it saw fit; *it is but reasonable* to assume that the attention of Congress was called to the facts that exist." (The record shows that no discussion took place!) The document all through scarce disguises the fact that the writer assumes that might is right. The history of this case is summed up in the fact that these lands were withdrawn on suspicion, and power confirms the withdrawal on an assumption.

This decision was rendered on April 6, just ten days before the trustees were again compelled to go 300 miles, at great expense to stand trial on the charge of cutting timber on Government land. And the promptitude of its promulgation naturally suggests to us, who have suffered so much foul play, that it was done to be out in time to furnish a cue to the prosecution. This time (April 16) the trustees were tried before a jury. The charge contained two indictments: The first, of cutting five pine trees on land upon which no legal filing had been made; the second on land upon which filings *had* been made.

The defence under the first charge was that the law distinctly gave permission to cut timber, provided such timber was used for "improvements," on the land from which it was cut, and was not used for "export or disposal." As before stated, the lumber was used on huts and a sawmill; but Judge Ross ruled that such use was not an "improvement," and the jury was therefore constrained to bring in a verdict of "guilty."

The second indictment was dismissed because that involved the question of the right to cut timber on land filed upon, a question the instigators of the prosecution did not feel safe to tackle, a confession of weakness on their part.

This trial was accompanied by one of the most indecent displays of malignant animosity and lying and abuse of function on the part of a local newspaper that ever disgraced the records of journalism. The "Los Angeles Express" for three successive evenings, and while the case was *sub judice*, attacked the leaders of the colony in the most rabid manner, publishing a most fabulous tissue of lies and charges, which, if only one hundredth part true, ought to have consigned the defendants to life imprisonment. The enemy flooded the country with this lying newspaper's statements, and tried to create the universal impression that the trustees *had been found guilty by the United States court* of swindling the public and attempting to "steal" and destroy the Giant Forest. (See Appendix, p. 39.)

The enemy having but a flimsy case at law, and only securing a verdict of guilty by a very arbitrary construction of the law, put their main trust in the method of wholesale newspaper slander, which was so far successful that it alarmed the isolated and scattered outside membership and effected a very serious reduction of the colony's income, the object aimed at by its persecutors being to destroy it by crippling its resources.

It is quite evident that these same lies that were sent abroad to prejudice the public had previously been sent to Washington, from the fact that two companies of cavalry were ordered up to patrol and "protect" (!) the Giant Forest. That this action was all a "bluff" is evident from the fact that at the first hearing of the case, December 16, it was shown, (1) that not one single attempt had ever been made to cut any of those mammoth trees; (2) that, on the contrary, the colonists had of their own accord constituted themselves the guardians and police of that forest, having during five years saved it a number of times from destruction by fire.

The absurdity of the charge made by the enemies of the colony, upon which they laid so much stress, that the colonists were destroying the sequoiæ, is also apparent from the fact that the nearest point of the colony road to the sequoiæ is at least five miles distant, and the route thereto is over canyons that no horse and wagon can travel. The absurdity is further apparent from the fact that the giant trees will be a thousand times more valuable to the colonists as objects of attraction and interest to tourists than their value would amount to cut up into lumber. Besides this, the colonists are a class of people who can appreciate and reverence these grand monuments and silent sentinels of the receding centuries, *and are prepared*, if so required, *to place themselves under the most rigid obligations not to molest one of them*. This obligation they would accept willingly and cheerfully.

On June 8, 1891, the trustees, who had appealed from the verdict, and demanded a new trial, which was refused, were ordered to appear for sentence. The sentence imposed was $301 on each trustee, from which sentence an appeal was taken.

The events here enumerated show conclusively that this sudden and zealous solicitude for the big trees and the minor forests is but a hypocritical pretense under which to accomplish the ruin of a colony whose industrial success would be a menace to the monopolies which obtain everywhere in the United States, and particularly in California.

As if to demonstrate beyond question that this is the object of the "public park" and "forest reservation" humbug, no sooner were the colonists deprived by legal proceedings of all power to get their living, or to injure the newly-created public domain, than their persecutors attempted a new outrage upon them. Driven from their *own* lands, Irvin Barnard, a colonist, leased 160 acres of timber land, *private property* belonging to the Atwell estate, twenty-five miles from Kaweah, and contiguous to the "public park," and employed the colonists in cutting timber thereon. No sooner did Special Government Agent Cauldwell, who had instigated the former proceedings, hear of this escape of the colonists from the legal net in which he thought he had securely enmeshed them, than he paid them a visit and threatened to stop their work, although on land that had been private property *years before the act of October* 1, 1890. Mr. Cauldwell was as bad as his word. He reported to Washington the fact that the colonists were cutting timber at Atwell's, though why he should make it his business to do so any more than why he should report that John Smith was digging his own garden in Visalia does not appear. A few days thereafter the captain of the troops came down and ordered the colonists to stop cutting timber. They refused, save on an order from the court or the application of force. Again the lieutenant came down and reiterated the captain's order, and met with the same refusal. Then followed a short respite, during which reports and orders were flying back and forth between Washington and Cauldwell and the military.

During this period a reporter of the Tulare County Times interviewed Cauldwell and asked him if the report was true that the colonists had been notified to stop cutting timber, and he replied, "It's a d—d lie, and you can so state on my authority; if it were so the newspapers would be howling." This unnecessarily profane denial hardly agreed with the facts that the military *had* already notified the colonists twice; nor with the fact that both the captain and lieutenant told the colonists that they had *orders* to stop the cutting; nor with this telegram:

[Copy of telegram.]

"WASHINGTON, D. C., *July 9th, 1891.*

'CAPTAIN J. H. DORST, *Supt. Sequoia N. Park:*

"You will not permit the cutting of any timber within the park until further orders.

"(Signed) GEO. CHANDLER, *Act'g Secretary.*

"A true copy:

"J. H. DORST, *Capt. 4th Cavalry;"*

nor with the fact that in a few days after, namely, July 21, the military again ordered them to stop; and on July 23, when the lieutenant with two men went up, and taking two of the colonists by the shoulders, *compelled* them to desist.

Instantly, on the consummation of this outrageous invasion of the private rights of citizens by Federal troops in time of peace, the colonists prepared to defend themselves by a resort to the law, and were on the point of obtaining warrants for the arrest of the soldiers, when it suddenly dawned upon the authorities at Washington, what everybody and the Government knew, that this Atwell land is private property, and they telegraphed orders not to interfere any more with people who occupy patented lands.

With this gracious permission of the Government to live and to earn their living on their own land, the colonists were fain to let the matter rest; thus displaying a magnanimity in strong and striking contrast to the cowardly spite of their wealthy and conscienceless tormentors who, we are sure, are making but a cat's-paw of the Government.

This little history of a great wrong shows how completely the monopolists dominate the country, hoodwink the people, and prostitute the law to their own private gain and the oppression of the people. The grabbing of hundreds of millions of acres by the cattle barons, the mining lords, and the railroad kings, who exploit the people down to the last penny their franchises enable them to extort; the unconstitutional employment and maintenance of a private army of Pinkerton soldiers; the systematic reduction of wages of helpless toilers in the coal fields, on railways, and in manufactories, and their shooting down in cold blood—with never any casualties among the shooters—when they have been goaded to riot by paid agents of their oppressors; the deliberately plotted and planned booming and dooming of a town, and the starvation of men, women, and babies, and the devilish blacklisting of those who dared to relieve them—as at Spring Valley, Ill.—by companies whose directors reap the profits thereof, but whom no law can be made to reach; all this corporate wickedness, including the plot to destroy in the bud the hopes of those whose eyes are eagerly turned to the coöperative colony at Kaweah, are but steps in the funeral march of liberty to the grave. The edict has practically gone forth in this great broad land, abounding in statues of liberty, whose millions of people are taught to worship the fathers of the Republic, by a hierarchy of plutocrats who, judging from present appearances, would for thirty pieces of silver sell the Republic—fathers and all—that nowhere in any corner, however obscure, shall there be allowed to exist any industrial organisation whose object is to escape the exactions and robberies of the landlord, the syndicate, and the trust.

The question for Congress and the people now to decide is, whether the *nation*—whose representatives the Government is supposed to be—is absolved from all obligations to keep faith with the wealth-producers whom they invite to settle on wild lands; whether Congress is to be deceived and misled by scheming lobbyists into favoring blood-sucking monopolists, to the oppression of loyal citizens, some of whom have in timespast hazarded their lives to maintain our free institutions, and who are all of them honest and industrious members of the commonwealth. Or are we to understand that no man has any right to expect justice or fair play when the capitalistic highwayman in his insatiate greed comes along and orders his victims to "stand and deliver?"

Only the bare outline of the story of this injustice is here given, that the minds of those to whose attention this case shall be brought may not be confused with a mass of details; but this simple recital ought to be sufficient to stir the blood in the heart of every lover of liberty and equality; and we appeal, not alone for ourselves, but for thousands of settlers in other parts of California, particularly in the Mariposa district, who have, unfortunately, been afflicted, equally with us, by the hostile action of the Interior Department towards bona fide settlers. For them, as well as for ourselves, we plead and trust that the conscience of the nation may be aroused to check the greed of those rapacious monopolies—who are the real instigators of these outrages—and teach them that there is one country on the face of the earth where justice reign, and where the rights of every one *shall be* respected.

In conclusion, we can do no better than to quote the letter of our secretary, J. J. Martin, published in the Tulare County Times of May 7, 1891:

"LETTER FROM MR. MARTIN.

"*The secretary of the Kaweah colonists makes some plain statements.*

"*To the Editor of the Times:*

"SIR: The trustees of the Kaweah Colony, three of whom have been citizens of Tulare County for several years, were convicted recently at the United States district court of Los Angeles of cutting *five pine trees* upon Government land, and are now held under bail pending sentence of the court. This conviction was secured through the secret persecution and malicious misrepresentation of the lumber monopoly of this coast, this monopoly fearing the competition of the Kaweah Colony in the lumber business.

"It was proved conclusively at the trial that all the lumber cut by order of the defendants had been used by those engaged in making useful and valuable improvements upon the land from which the trees were cut and upon lands adjacent thereto. In former decisions where it has been shown that timber has been cut from Government land in good faith for purposes of actual settlement and improvement, and not for speculation or export (as was clearly shown to be the case in this instance), the Interior Department and the courts, upon such showing, have recognised the rights and the needs of the settler to cut timber necessary to support his improvements. The Secretary of the Interior rendered a decision to this effect recently in a case where 650,000 feet of lumber had been cut by one man. It is notorious that wealthy lumbermen have cut and sold for speculative purposes millions upon millions of feet of lumber to which they had no title, but in such cases, when they have been brought to light, the matter has generally been hushed up or a light fine imposed. It is quite right that such wholesale robbery should be stopped, but it is *not* right that a few industrious men, who have worked hard for five years in making valuable public improvements and who have not cut enough lumber to make themselves even decent homes, should be pounced upon by the agents of the Government, be held up to the world through the public press as the greatest villains unhung, and made to suffer for the sins of the wealthy lumber corporations who are bleeding the people of this valley by exorbitant charges for lumber. Not a farmer in this State can build himself a house or barn without paying an enormous tribute to these Cæsars of the lumber monopoly. It is well known that it is the hand of the lumber monopoly that is now upon the throat of the Kaweah Colony. The custom of the courts has been, 'Where the Government alone is concerned, the land laws must be liberally construed.' (Hull *vs.* Hawkins, Land Owner, v. 6, p. 191.)

"It would seem in this case that both judge and jury were influenced by the villainous falsehoods concerning the defendants and the colony that were published by the Los Angeles Express at the time of the trial, evidently for the purpose of creating an unfavorable prejudice against the defendants, for they certainly did not get the benefit of a liberal construction of the law.

"These defendants expected the protection and support of the Government in the work in which they were engaged. They had no thought or intention of doing anything criminal. In the belief that they would be fairly dealt with, they went to work and made valuable public improvements, built themselves temporary homes, and induced others to join them in the settlement of the country. They were proceeding to erect factories and otherwise to develop and enrich the country by their industry, on a coöperative and nonspeculative basis. For cutting *five small pine trees* for these purposes, they were dragged 300 miles away from their homes, tried and convicted by a strange judge and a strange jury, and are now awaiting sentence.

"It is a sad evidence of the insecurity of our republican institutions if citizens who have given every evidence of honesty and sincerity can, under forms of law and by a court of justice, be thrust into jail, maligned, slandered, and persecuted for honestly endeavoring to build up the interests of the county in which they live. If those charged with the administration of the law, with such evidences of good faith before them, condemn to a felon's cell their fellow-man, then have we surely reached the time when our liberties are virtually at an end, and when for organized labor to oppose or in any way compete with organized capital is an unpardonable crime. If this, Mr. Editor and fellow-citizens, *is* the issue, which I hope it is not, then perhaps it is better that our persecutors pour out their "vials of wrath" and carry out their persecution to the bitter end. Let it come in all its ferocious malignity. Let the news of our incarceration be borne upon the breeze to the four corners of our Republic, so that our slumbering comrades of the farm, workshop, and bench may be sooner awakened to a realization of the fate that awaits them at the hands of the corporations, trusts, and syndicates that are fast stealing away the liberties of the people. I can answer for four of the defendants, who will be proud to suffer martyrdom, if by it the toiling millions of our land shall be made to see the dangers that threaten them. They may imprison the bodies of our men, they may attempt to intimidate our women and children by troops of cavalry, but they can not crush the spirit of brotherhood and fraternity that binds our little band of heroes together at Kaweah. This spirit, which is born of love, is abroad in the land, and is spreading far and wide. The people are weary and tired of competitive strife, and are praying for deliverance. Many are looking to Kaweah in hope of relief.

"To recapitulate: If to cut lumber for the building of rough cabins for those engaged in making a valuable mountain road be a crime, then are we guilty; if to open up and develop natural resources for the benefit of ourselves and our neighbors be a crime, then are we guilty; if to induce industrious citizens to come and share with us in the beauties of nature, and by their labor increase the wealth and build up the interests of a country be a crime, then are we guilty; if to contemplate and plan for the erection of factories and the building of railroads be a crime, then are we guilty; if to be an evolutionist, and not a revolutionist, be a crime, then are we guilty; if to live peaceably with our neighbors and pay our debts be a crime, then are we guilty; if to establish public schools and devise ways and means for healthy recreation and amusement of old and young be a crime, then are we guilty; if to attempt to establish in a practical manner "peace on earth and good will to men" be a crime, then are we guilty. All these have we done, and the citizens of Tulare County are witnesses of the fact. As of old, the wolf accuses the lamb, and the law demands a sacrifice.

"J. J. MARTIN,
"*Sec'y Kaweah Coöperative Colony.*

"VISALIA, TULARE CO., *May 5, 1891.*"

APPENDIX.

The following extracts from The Commonwealth, the organ of the colony, of November, 1889, then a monthly issue, will give a vivid idea of the natural resources and scenery of the locality in which the Kaweah Colony is situated:

"THE 'GIANT FOREST,' TULARE COUNTY, CALIFORNIA,

"Is situated in the southeast portion of the county embraced in townships fifteen and sixteen south, and ranges twenty-nine and thirty east, Mount Diablo base and meridian. This portion of the great timber belt that stretches for several hundred miles along the Sierra Nevadas, at an altitude between six thousand to ten thousand feet, derives its title 'giant' from its remarkable redwoods (Sequoia Gigantea). Nowhere else in the world can be found a collection of trees of such enormous proportions.

"Owing to its almost inaccessible location the forest remains intact in all its primitive majesty. The history of a thousand years can be read at a glance. Giants of past ages lie as they have fallen centuries ago, frequently one across the other, some partly embedded in the earth and others completely buried. Many of these fallen giants have been burnt hollow, the fire consuming the heart of the tree, leaving an immense tube, in instances large enough for a horse and rider to pass through. Some of these burnt logs are fifty, sixty, and sometimes over one hundred feet long, with a hollow space eight to twelve feet in diameter, tapering off to two feet or less, and are frequently used by hunters and trappers as winter quarters.

"The scenery in and around the forest is of the grandest. At the entrance to the forest from Marble Canyon, Moro Rock, a huge mass of solid granite rises perpendicularly *some seven hundred feet* from its base. The best near view of this remarkable rock, which can be seen plainly from the valley fifty to a hundred miles away, is obtainable from 'Admiration Point,' but only those who are sure-footed and have a steady nerve had better trust themselves to the edge of this precipitous pinnacle which overlooks the mighty marble chasm. From here the fourteen falls of the 'Marble Fork' are seen gushing and rushing with hasty stride down the mighty marble staircase of its own construction. From here, also, an excellent view is had of 'Castle Peaks,' 'Kaweah Peaks,' and 'Needle Rock.' The two former are well-known features of the Sierras; the latter is a peculiar natural formation in the shape of an obelisk, rising perpendicularly some *five hundred feet*, and said to be ninety feet across the top or point; another rock of nearly similar dimensions stands alongside, giving the two, when viewed at a certain angle, the appearance of cathedral spires; hence they are known as 'Cathedral Rocks.' But the best view is obtained from old Moro itself. From here the country lies extended before the beholder like a map. At our feet the Marble Canyon, along which the silvery line of the Kaweah River can be traced for miles. To our left Paradise Canyon and the precipitous peaks of the higher range of snow-clad mountains. At our back and to our right, the solemn, silent forest. To the west, the great San Joaquin Valley, with its sinuous, shining rivers, its big lake and little towns, dotted all over its vast area; everywhere that the eye turns, a picture of the grandest sublimity is presented.

"The largest of all the giant trees in California are found in this district. One has been found to measure 166 feet in circumference; another, named "Karl Marx," is 39 feet in diameter, and another, named "John Swinton," is 35 feet in diameter. The whole district is one of the most magnificent in the world.

"*Objects, aims, etc., of the coöperative commonwealth.*

"The purpose of this organization is to carry out, practically, the theories in regard to an enlightened civilization which have been the theme of philosophers and thinkers for ages.

"To this end Kaweah was organized in August, 1886.

"Its prime mission is to insure members against want, or fear of want, by providing comfortable homes, ample sustenance, educational and recreative facilities, and to promote and maintain harmonious social relations, on the solid and grand bases of liberty, equality, and fraternity.

"OF WHAT MEMBERSHIP CONSISTS.

"A membership in this association consists of an equal share with other members in the emoluments, profits, privileges, and hereditaments of the colony. It guarantees to every member an equal share in all that the soil and machinery can produce, measured by the amount of time said member has usefully employed, or the proportion of mental or physical energy he has himself expended in the general result, whatever it may be.

"Only those are desired as members who are in sympathy with the great movement now going forward for the elevation of mankind, one of our motives being to show in a practical manner how the vexed labor question may be peacefully solved by instituting a system of industrial coöperation, in which all participants will have equal opportunities for advancement.

"All persons of progressive tendencies and good moral character, male or female, are eligible for membership in this colony. The company, however, reserves the right to reject any applicant they may deem objectionable.

"The price of a full membership is $500, of which $100 must be paid in United States money before a member is entitled to take up a residence and obtain employment from the colony. The membership fee can be paid in full at once, or in installments of any amount not less than $5 per month.

"Upon making application for membership, the sum of $10 in United States money must, in all cases, accompany the application. In case of rejection this sum will be returned in full to the applicant.

"Those who prefer [illegible] do so can pay the total amount of their membership at once in money or approved material.

"The following rule at present governs the admission of members to work at the colony:

"A member must have paid the sum of $100 in United States money upon his certificate of membership before he is entitled to employment.

"Those who pay the sum first are entitled to precedence in the order of such payment.

"The remaining $400 due upon the certificate can be paid in money or acceptable material, or in the time-checks of the colony earned by the member.

"Members admitted to work upon the above conditions have the privilege of drawing upon the colony for board and supplies, while working, under prescribed rules, paying for the same in the time-checks earned by them.

"ACTUAL RESIDENCE NOT COMPULSORY.

"As it will not be convenient nor desirable for all members to settle in the colony at once, all that will be required of those who prefer to postpone actual residence, is to pay up the price of membership. They will then be entitled to take up their residence when it suits their convenience.

"In case of sickness, medical attendance, being a public service, is free to those who need it.

"Insurance in the event of death, is unnecessary, as orphan children of members will be a public charge, while those who are old enough can always earn their own living.

"PROPOSED INDUSTRIES.

"As soon as practicable sawmills and factories will be erected. There is a lively and almost unlimited demand in the great valley below, for lumber, dressed and undressed, fence posts and rails, railroad ties, telegraph poles, doors, window frames, sashes, blinds, furniture of all kinds, etc. The development of these will open up avenues of employment in other directions; stores and warehouses will have to be built and means and methods of transportation established. The lumber industry alone, in its various branches, will employ quite an army of workers.

"Several veins of the finest varieties of marble, in inexhaustible quantities, have been discovered and located upon colony territory. This industry will be developed as soon as practicable, and bids fair to rival the timber in importance and value.

"Lime rock, found in abundance upon various portions of the colony territory, will, undoubtedly, in the near future, prove a source of income to the colony in addition to its inestimable value for home use.

"FRUIT PRODUCTS.

"The various grades of altitude embraced in our territory, together with the salubriousness of the climate, make it possible for almost any but tropical productions to be grown in Kaweah. At an altitude of from 1,500 to 3,000 feet, semitropical fruits, such as oranges, lemons, olives, prunes, raisin grapes, almonds, figs, etc., do exceedingly well. From 3,000 to 7,000 feet the apple, pear, peach, hazelnut, walnut, and other products of the temperate zone, flourish in perfection. In the lower altitudes the grape grows wild; in the upper, the gooseberry, hazelnut, and blackberry are found in abundance.

"The hillsides of Kaweah are admirably adapted for the growth of the olive, and these produce the most valuable crops known, with the least expense incurred in the production.

"FISH PRODUCTS.

"The pools of Kaweah are well stocked with trout. It is the intention of the colony to build weirs for the cultivation and preservation of suitable varieties of fish for food purposes. The North Fork of the Kaweah is admirably suited for this purpose.

"ADMINISTRATION.

"The aim has been to make Kaweah a thoroughly democratic institution, in the true meaning of the term. Members are all upon an equal footing so far as opportunities are concerned. The property of the colony is owned by the membership as a whole, no one having a larger interest than another. Dividends are payable only upon the time actually employed by a member in some useful occupation. All have an equal voice and vote in the affairs of the commonwealth. The affairs are administered by a board of five trustees, any or all of whom can be recalled at any time, under rules laid down in the by-laws. Each distinct branch or division of industry is under the supervision of a chief carefully selected by the board of trustees, but who is subject to removal at the will of a majority of the workers in his department. By this means a thoroughly democratic and satisfactory administration of affairs is maintained. General meetings of the colony are held upon the colony grounds the first Saturday of every month, when reports of the board of trustees, of the secretary and treasurer, and of the chiefs of departments, are received and acted upon. These meetings are the legislative assemblies of the commonwealth, at which all its important affairs are discussed and transacted. Every member of the commonwealth has a right to be present and to vote, or to speak upon any question presented.

"Money paid into the association is never forfeited. If a member, through sickness or misfortune, should be unable to meet the monthly payment due upon the certificate, before the installment of $100 entitling him to take up residence is paid, the sum he has already paid in, whatever it may be, will stand to his credit until such time as he can pay the balance. In case of wilful neglect to remit dues, the member's name can, at the option of the members, be stricken from the roll, but he will be entitled to receive back the sums to his credit, as provided in section 11, article 1, of the by-laws.

"No assessment of stock will be levied.

"Let all who feel that they ought to identify themselves with this grand work come forward manfully and put their shoulders to the wheel. We need willing hands, courageous hearts, and means sufficient to impart the momentum necessary to start our little world revolving upon its axis.

"We invite the coöperation of all who are in sympathy."

The deed of settlement and by-laws of the colony.

[Deed of settlement. Adopted March 9, 1888. The certificate of adherence, which must be signed by every member, and acknowledged before a notary public (in California) or a commissioner for the State of California (in other States).]

Know all men by these presents that this indenture, made the ninth day of March, A. D. 1888, by and between all of the undersigned, parties thereto, who execute this deed, agreement, and covenant, by and with each other, and one with each and each with all, and for and in consideration of the premises, and of love, affection, and good will, and further in consideration of the mutual benefit and advantages now accruing and hereafter to accrue, by and between us, and in still further consideration of the sum of ten dollars in lawful money of the United States by each and all of us in hand paid to and for the collective use of all of the other special copartners and joint stockholders herein, the receipt whereof by all the other said copartners is hereby acknowledged, do contract and agree, covenant and promise, for ourselves, our heirs, executors, administrators, and assigns, by and with each other and jointly and severally, one with each and each with all, as follows, to wit:

We agree to form and establish, and hereby do so form, a limited special partnership or joint stock company under the name and style of the "Kaweah Coöperative Colony Company of California, limited, a joint stock company."

The general nature of the business to be transacted is to engage in the production and distribution of wealth; the collection, extraction of raw material, its fashioning by hand craft and machine craft into commodities; the culture of both animal and vegetable products; the production of food, clothing, shelter, machinery, and any and all other articles of convenience, necessity, or luxury; the establishment of proper methods of distribution, transportation, and storage; the establishment of just and correct systems of credit, account, and exchange; the building of houses for ourselves and families; their coöperative administration; the arbitration and just settlement of disputes between ourselves; the practice among ourselves of just systems of social organization; the education of ourselves and our children in proper physical, mental, moral, intellectual, and artistic lines; to improve the health, secure the happiness and perfect well-being of each and every member; and as well to propagate and extend in the world at large the idea of universal and just coöperation.

The names of the partners and stockholders hereto and their residences are specified at the bottom of this deed and in the certificates of adherents thereto, hereto attached.

All and each of said stockholders are special and each and all have contributed or are bound to contribute to the joint funds or capital stock or capitalization of the company, the sum of five hundred dollars ($500), and their liability herein is limited to that amount, of which limited liability (and as well of the powers and authority of all the members and officers of said company in dealing with the public), notice is thus given to all the world.

The duration of this partnership is the longest given by operation of the law, and it begins at the date of the execution of this instrument as between the parties; and to the world at the date of the recording in the office of the recorder of the county of Tulare, State of California, as required by law.

Each stockholder contributes to the common stock five hundred dollars, as aforesaid, of which at least one hundred dollars must be in lawful money; the balance may be paid in labor or acceptable material. Upon expulsion, resignation, or death of any stockholder the value of his capitalization, or so much thereof as has been paid in, shall be apportioned out of the common stock and paid over to himself or his heirs or executors, and each stockholder hereby expressly waives all claim to or right for any increase, interest, or earned profits of any kind whatsoever accruing or due thereon both for himself and his heirs, executors, and assigns, it being distinctly understood that upon death, and equally so in case of withdrawal or expulsion, the estate, or himself, shall withdraw only the amount with which he has assisted the capitalization (all rents, profits, interests, improvements, and all realty and personalty, except chattels private, reduced to personal possession, and private hereditaments earned and paid over as dividends or wages to the stockholder during his membership, being distinctly and hereby granted in bulk and for the common use and benefit of the surviving and remaining stockholders); it being distinctly understood and agreed that the estate that each shareholder takes or holds in the increase, improvements, and acquisitions of the company is for life, or years, and not an estate in fee, and that the remainder lies always to the successor only when he shall be accepted as a member. Such remainder to him being a remainder of the same class and character as to the original member, and therefore it is well understood and agreed that no member has the right to sell, assign, or transfer his interest herein to any one whatever without the consent of the company.

It is definitely agreed and understood that any stockholder may be expelled from the company by a two-thirds vote of the other members.

That the detailed methods of carrying out the plans and purposes of this company shall be hereafter formulated by the members, and that if not in conflict with these fundamental articles, and if adopted by a majority vote of all the members they shall be binding on each and all of us equally with these articles.

The legal officials of the company and those entitled to transact business in its name, all other stockholders being barred from so doing, and the company not being liable for the acts or contracts of others, of which let the world take notice, shall be a board of five trustees, to be elected on or before the first Saturday of May, 1888, by the stockholders, as herein provided, and to hold office during the pleasure of the members. This board shall be elected by ballot, all members being entitled to cumulate their votes, and shall hold office until recall.

This board shall be the legal representatives and special trustees for the company, having such special powers only as are granted them from time to time by the membership. They have no power to contravene the intentions of this instrument, nor to alienate any of the property of the company, nor to incur any bonded, mortgage, or other indebtedness, except as provided in the by-laws of the company.

The stockholders' meetings shall adopt such rules and regulations as may be necessary for the operation of the company, and may provide for such other officers and employés as may be found necessary from time to time.

They shall and must provide for the administration of this company on purely democratic lines in such a way to, as far as possible, secure the organization of a society wherein, between the members, it shall be unlawful to take interest, profit, or rent, where all labor shall be systemized, shall be paid its full value, and where all products shall be furnished for use to members at cost; where the administration of affairs shall be democratic and fully within the control of the membership, including the initiative, the imperative mandate, the referendum, and minority representation, where the company may decide its own disputes between members by arbitration, and enforce suitable penalties, and may regulate the admission, suspension, and expulsion of members.

And it is agreed by and between each and all of us that at all times during the continuance of this company we will each and all give our attendance and do our best endeavors, to the utmost of our power, and shall exert ourselves for the joint interest, profit, benefit, and advantage, and truly employ, buy, sell, produce, transport, build, and merchandise with the stock aforesaid and our joint and separate labor, without fraud or covin, one for all and all for one, as agreed upon hereinbefore, and to be hereinafter set out in detail in such by-laws as shall be adopted for our government and regulation and direction as herein provided.

In witness whereof the said parties to these presents have hereunto set their hands and seals, this —— day of ——, A. D. 1888.

—— ——. [SEAL.]

JOINT-STOCK COMPANY BY-LAWS.

[Original draft as adopted March 9, 1888.]

Article 1 —Membership.

PRESENT NUMBER OF MEMBERS, 500; CAPITALIZATION, $250,000: HOW INCREASED OR DIMINISHED.

SEC. 1. The capitalization of this company may be increased or decreased from time to time by a two-thirds vote of the shareholders. It is fixed at present at $250,000, divided into five hundred shares, to be sold at their par value, as hereinafter provided, par value being five hundred dollars per share.

SHAREHOLDER'S INTEREST LEGALLY DESCRIBED.

SEC. 2. In consideration of the receipt of $500, as hereinafter provided, the company admits the purchaser to a specified interest and conditional estate for life or years in the colony. This estate consists of an equal right in the advantages, emoluments, dividends, and profits declared during his estate, and privileges appertaining or in any way belonging thereto, and the full use and enjoyment of the same in common with all its members.

The relation established by admitting a member is a personal relation, and each and every member is a trustee for each and all others and for the company at large.

WHEN MEMBERSHIP BEGINS.

SEC. 3. Membership shall commence upon the payment of the first ten dollars of the amount of capitalization, subject to the conditions and agreements stipulated and set forth in the certificate of membership.

WHEN AND HOW MEMBERS BECOME ENTITLED TO EMPLOYMENT.

SEC. 4. As soon as a member has contributed in money the sum of one hundred dollars ($100), he or she will be entitled to residence and employment on the grounds of the colony. He or she will be placed upon a list of membership in rotation in order of payment. Those whose names rank first on this list will be entitled to precedence in their regular order and will have the first privilege of employment in the colony.

INSTALLMENT PAYMENTS PERMISSIBLE—AMOUNT OF—SUSPENSION FOR DEFAULT.

SEC. 5. Members will be given the opportunity to pay their capitalization of $500 by installments. But these installments must be paid at a rate of not less than $5 per month. Any member in arrears in payment of his monthly installments for three months may, by vote of any general meeting, be dropped from the membership roll.

CONCERNING APPLICANTS.

SEC. 6. Applicants for membership not vouched for by any member of this colony must give satisfactory references as to their fitness for membership. All applicants for membership will be required to fill out the blank form of application prescribed by the colony. Rejected applicants for membership will have the amount deposited by them returned.

NO SPECIAL PRIVILEGES.

SEC. 7. No member shall have any advantage, privilege, benefit, or emolument over the others.

CHILDREN.

SEC. 8. Children of members are eligible to become members of the colony at the age of eighteen years, upon payment of the fee prescribed by the by-laws as applied to any one wishing to become a member, provided, however, that if such applicants have been residents upon the grounds of the colony for the period of five years prior to their majority then their fee may be paid entirely in labor, if so desired.

APPROPRIATE WORK.

SEC. 9. Every member shall have equal opportunity to work for the colony in the avenue of employment for which he or she is best fitted.

EXACT EQUIVALENCE OBLIGATORY.

SEC. 10. Every member will be required to render value in either labor, money, material, or services for everything he or she receives from the colony.

WITHDRAWAL.

SEC. 11. A member can withdraw from the colony at any time by giving three months' notice to the secretary of his intention to do so. He will be entitled to receive back all that he has paid upon his certificate, but any debts he may owe the colony will be deducted therefrom. The payment shall be made at the earliest possible convenience of the colony, but shall not be given priority over other liabilities whose payment is necessary to the perpetuity of the colony.

WHAT BECOMES OF THE FIXTURES TO THE REALTY ON MEMBERS' WITHDRAWAL.

SEC. 12. Upon the withdrawal of a member, his private dwelling and improvements, if he have any, will be valued at a fair valuation upon the basis of cost, and he will be allowed the full value of the appraisement, whatever it may be.

MEMBERS—HOW ELECTED OR REJECTED.

SEC. 13. The board of trustees shall provisionally accept or reject all members. All names of members thus accepted or rejected shall be published in the monthly report to all members, and if no contrary vote, as provided, is received within thirty days, then the board's decision shall stand. A negative vote of any five members suspends the applicant until the board submits his case, which they shall do in their next report. In such vote, five per cent of negative votes finally rejects.

Any applicant rejected by the board may, upon recommendation of five members, appeal to the full membership, in which case a two-thirds vote shall elect.

CERTIFICATES NOT TRANSFERABLE WITHOUT CONSENT.

SEC. 14. The certificates of membership herein are not transferable without the consent of the company.

MEMBERS CAN HOLD BUT ONE CERTIFICATE.

SEC. 15. No person shall hold more than one certificate of membership in this company.

PREMIUM UPON MARRIAGE—RIGHT OF WIFE TO VOTE ON HUSBAND'S SHARE.

SEC. 16. Two votes inhere in each share where the shareholder is married; one of these votes may be cast by the wife and the other by the husband. Where the shareholder is unmarried he or she shall be entitled to cast but one vote.

REAL ESTATE AND CERTAIN PERSONAL PROPERTY SPECIFIED AS BEING THE PROPERTY OF THE COMPANY AS A WHOLE.

SEC. 17. All land, buildings, stock, crops, machinery, warehouses, tools, stores, and other property, except private dwellings and personal effects and hereditaments of members contained therein, and other goods and chattels particularly specified as exempt by the company, shall be held in common by the shareholders.

BUILDING SITE OF MEMBERS.—HELD AS TENANT UPON CONDITION.

SEC. 18. Each member shall be entitled to a piece of land not less than one hundred and fifty by one hundred and fifty (150 x 150) feet, upon which he may erect a dwelling, and shall enjoy exclusive use and privilege of the same as long as he remains a member of the company.

NO STORES OR PRIVATE WAGE-HIRING PERMITTED.

SEC. 19. No member or other person will be allowed to keep a store for the sale or exchange of goods or wares of any kind or description upon the lands of the company, nor shall any one colonist employ another.

COLONY STORE, WHERE GOODS SHALL BE SOLD AT WHOLESALE COST.

SEC. 20. The colony shall keep a store for the convenience of members, at which all articles of necessity can be purchased by them with the labor time checks provided by the colony. Cost shall be the limit price.

IN CASE OF DEATH.

SEC. 21. In case of the death of a member, the amount paid upon his certificate, together with the actual cost of the buildings and useful improvements, if any, that he may have erected upon the building lot occupied by him, shall be paid to his legal heirs. But the same shall not be payable until one year after the death of the member, unless at the option of the board of trustees.

Article II.—Administration.

PRINCIPAL PLACE OF BUSINESS.

SEC. 1. The principal place of business of the company shall be on the company grounds at Kaweah, Tulare County, California.

GENERAL MEETINGS.

SEC. 2. The general meetings of the company shall be held at the principal place of business on the first Saturday of each month at 2 p. m. A quorum shall consist of twenty members, but a lesser number may adjourn from time to time until they secure the attendance of the requisite number of members. The first business of each such meeting shall be the election of a chairman. The general secretary of the company shall act as the secretary of the general meeting. In his absence a secretary pro tem shall be appointed.

MONTHLY REPORT OF SECRETARY.

SEC. 3. The proceedings taken at any general meeting shall be notified to the whole membership by the general secretary in his monthly report.

SUPREME AUTHORITY IS THE MEMBERSHIP.—HOW SECURED.

SEC. 4. The supreme authority of the company is the membership, and, except as otherwise herein provided, a majority vote thereof shall be of binding force. The referendum, imperative mandate, initiative, and minority representation are the sacred rights of each shareholder, and any attempt by any of the officers or members of the company to abolish or abridge them shall be cause of expulsion. An appeal always lies to the membership upon any question.

REFERENDUM—WHAT IT IS.

SEC. 5. The referendum is the means by which the whole membership may pass upon, adopt, or repeal any measure initiated by the officers of the company. Such vote of the whole membership may be demanded at any time by ten per cent of the membership.

IMPERATIVE MANDATE—WHAT IT IS.

SEC. 6. The imperative mandate is the power residing in the membership to recall at any time any officer, agent, or employee by a majority vote of the company. It may be put in motion at any time on demand of ten per cent of the membership.

INITIATIVE—WHAT IT IS.

SEC. 7. The initiative is the power residing in the membership, of themselves to initiate any measure desired. On demand of ten per cent of the membership the measure desired must be submitted to the company for their votes, and if it receives a majority vote of the whole membership, must be adopted and followed.

MINORITY REPRESENTATION—WHAT IT IS.

SEC. 8. Minority representation shall be secured by the cumulative vote. This vote is explained at length in the civil code of California, and confers upon each member voting for two or more officers the right to cast his one vote for all the officers, or to vote instead as many times as there are officers to be elected, for any, etc.

OFFICE OF SECRETARY.

SEC. 9. Until otherwise provided, the secretary of the company shall keep his office at the city of Visalia, Tulare County, California, and the bank of —— shall be the bank of deposit for the funds of the company.

TENURE OF OFFICE—CALL FOR A GENERAL ELECTION.

SEC. 10. The tenure of office of all officers and employees of this company shall be until recall, as above provided; except that ten per cent of the membership may at any general meeting, upon thirty days' notice, call for a general election of all officers. In case of such call, then the terms of all officers shall be declared at an end, and a new election be had at once. All officers, however, serve until their successors are installed.

GENERAL SECRETARY AND TRUSTEES.

SEC. 11. The general secretary shall be elected by the membership, and shall be ex-officio one of the board of trustees. Four others shall be elected by the members, at least two of whom shall be residents of the colony.

THEORY OF THE COMPANY GOVERNMENT.

SEC. 12. Immediately after election the board shall organize by electing a chairman of the board, a superintendent, and bookkeeper. The first two must be members of the board, and all must be residents of the colony. The board shall appoint such other officers, agents, and employees as may be necessary from time to time, prescribing their duties by resolution. The theory of government of the company being this: The trustees elect, the membership removes. Officers of departments may be removed by the workers of that department.

DUTIES OF THE SECRETARY.

SEC. 13. The duties of the general secretary shall be to keep the minutes of all general and special meetings, minutes of the board of trustees, to conduct the correspondence, recruit the membership, and, as financial secretary, receive, receipt for, and deposit in bank or with the treasurer all sums paid upon membership account, to keep membership ledgers, issue certificates of membership, render regularly, on or before the 15th of each month, a report to each member, of the condition of the company, issue such appeals, notices, referenda, mandates, and initiatory resolutions as may be lawfully demanded, and perform such other similar duties as may be ordered by the trustees.

WHAT FUNDS TREASURER RECEIVES.

SEC. 14. All other funds shall be received by the treasurer.

SECURITY OF FUNDS.

SEC. 15. All funds, by whomsoever received, shall be deposited in bank, and no payments whatever made except by check signed by the treasurer.

BOOKKEEPER.

SEC. 16. The bookkeeper shall keep the general accounts of the company, receive the time-cards of employees, calculate the credits, issue time-checks, make a report in writing of all transactions to each general meeting for the use of the secretary, and perform such other duties as may be provided.

SUPERINTENDENT.

SEC. 17. The superintendent shall oversee and direct the material work of the company, under direction of the board of trustees.

SUPERINTENDENT OF EDUCATION AND COMPANY JOURNAL.

SEC. 18. The membership at large shall elect also a chief of the department of education, whose present duties shall be to supervise the publication of a company journal, which shall contain the reports of the officers, educational matter, and general coöperative news. The journal shall be used by the secretary, to recruit the membership.

AUDITING COMMITTEE.

SEC. 19. The general meeting has the power to elect an auditing committee at any time.

ARBITRATION.

SEC. 20. All quarrels, grievances, and disputes shall be settled by arbitration, as provided in the laws of the State of California.

SPECIAL MEETINGS.

SEC. 21. Special meetings of the membership may be called by the trustees or by twenty per cent of the membership at any time.

Article III.—General provisions.

EIGHT HOURS' WORK.

SEC. 1. Eight hours shall constitute a day's work in the colony.

AMOUNT OF PRESENT PAYMENT PER HOUR'S LABOR.

SEC. 2. Thirty cents per hour shall be the established basis of exchange for labor rendered to the colony by the members, and by the colony to the members, until otherwise ordered by the colony.

SURPLUS EARNING—HOW DISPOSED OF.

SEC. 3. At least twenty-five per cent of all surplus in the hands of the treasurer each year shall be invested, under the direction of the colony, by the board of trustees, in a plant of some kind, that will tend to promulgate our coöperative views, and to benefit humanity in general—such plant or funds to be forever used for purposes tending to elevate mankind under the control of the colony. The balance shall be declared as dividends among those to whom time-checks were issued, in proportion to the hours worked, or shall by company vote be devoted to the improvement of the colony plant. Taxation of company members shall be equal.

TRUSTEES CREATE DEPARTMENTS AND ADMINISTER AS PROVIDED IN GRONLUND.

SEC. 4. The trustees shall create from time to time, as occasion may arise, the necessary departments for the administration of the work of the company, upon the lines laid down in Gronlund's Coöperative Commonwealth.

AMENDMENTS MUST BE NOTIFIED TO ALL MEMBERS.

SEC. 5. These by-laws may be altered or amended by resolution presented in writing at any meeting of the colony, provided, however, that all such resolutions shall be filed with the secretary, open to the inspection of members at least twenty days before said meeting. Immediately upon such filing the secretary shall notify all non-resident members of the purport thereof.

AMENDMENTS—HOW ADOPTED.

SEC. 6. For the amendment of the foregoing by-laws a majority vote of the membership shall be required.

DEED OF SETTLEMENT—HOW AMENDED.

SEC. 7. The deed of settlement can only be amended by a three-fourths vote of the membership and no by-law can be passed in conflict therewith, it being of superior binding force.

The summer of 1890 was the brightest and most hopeful in all the history of the colony. The road was finished; the timber was within reach; an income from the colony's own resources would soon be realized, and Kaweah was nearing the goal of its founders' ambition—the cooperative commonwealth, hope and example of the world—when there began to be perceptible that movement inimical to the colony, which we have sketched in the foregoing pages. It is indicated in the following from the "Commonwealth" of August 23, 1890:

"Mr. Cauldwell, the Government land inspector, who has been visiting the Giant Forest for several weeks, piloted by Trustee Taylor, returned to Advance Wednesday, and left the following morning for Visalia. Mr. Cauldwell is inspecting the various groves of redwood along the Sierra Nevadas under Government instruction, and will probably remain in the State some weeks."

This Cauldwell, who seemed *then* the colony's friend, has since made himself notorious as the animating spirit of the colony's persecution. As evidence of his friendship—real or pretended—Burnette G. Haskell testifies in his letter of January 23, 1891, to the Land Commissioner that:

"In July, 1890, Special Agent Cauldwell visited all of the filers and got from each affidavits that they were *still* owners and individual claimants, and not 'dummies.' He told me at this time that this fact established was all that the Department wished, and that he was certain that as soon as he sent these proofs on the General Land Office would sustain our appeal and order patents issued. He told me then that he had visited all the claimants and had found them all except two, who had died, and that all of them were 'real persons, were all alive, and were not dummies.'

"He then said, 'It is strange this case has staid so long undecided. There is nothing whatever of record against you on the records of the Department. If you had been willing to spend a little money at Washington you could have got it settled long ago, I am sure.'

I replied to him very clearly as follows (I remember almost the exact words, I am sure):

"We have had no money to spend in this case, and I do not believe it is needed. We would rather wait the Government's time than spend money illegitimately among employés to hasten action. We do not want to sell or mortgage our land; we want to use and improve it, and so the delay in issuance of a patent will not hurt us. If we were speculators and wanted to sell it out, why then we might be anxious for immediate issuance of patent so we could dispose of the land; but we are not; we are making homes there and developing the country. If a thousand dollars paid down would secure our patents to-morrow instead of next year we would not pay it."

Mr. Cauldwell replied, "I admire your spirit in this matter, and will do all I can to help you."

What trouble was brewing for the colonists is faintly foreshadowed in this extract from the "Visalia Delta," published at the time of Cauldwell's appearance:

"A short time ago the Delta in an editorial called the attention of the public to the fact that in the middle Sierra, within thirty miles of Visalia, there exists a tract of land naturally and well adapted for a public governmental park. . . . Within the boundaries of this township and the one immediately on the east are hundreds of natural features which will contribute to make this a grand resort for all true lovers of nature. But, of course, the chief feature of the proposed park is the one that will give it existance as a governmental reserve—the Big Tree forest. . . If it be claimed that the so-called Giant Forest, covering the broad belt of land between the Marble and Middle forks of the Kaweah, is still in the hands of the Government—if this be pointed out as an area more extended and therefore better adapted to park purposes—the reply is that this vast tract is already claimed by a colony of socialists who seem to be entitled to their land under existing laws, and that the land department has at least but an uncertain and insecure hold upon that forest; even should its questionable superiority be proven, another ought to be selected."

Commenting upon this article the colony paper, the "Commonwealth," makes the following emphatic declaration, which, seeing that it was made long before the vile charges of intent to destroy the Giant Forest were preferred against the colony, carries a tremendous weight of sincerity:

"It may be said right here that as long as the Kaweah Colony has any power to prevent, not one of the redwoods of the Giant Forest will be harmed. The Giant Forest will be maintained as a park and pleasure resort as long as the colony has the power to so use it, and every effort will be put forth to improve its charms by rendering them more accessible to the outside world. It was with this intention that our people filed upon and proved up the forest lands, to which, as the *Delta* justly says, they are entitled under all existing laws."

Let it be noted that this was published August 30, 1890.

THE BILL OF OCTOBER 1, 1890.

This, from the Congressional Record (pp. 11684-5) of October 1, 1890, is the record of the passage in the House of Representatives of the forest-reservation act, which, though so innocent looking, was really the vehicle of as rascally a piece of iniquity against honest citizens as was ever perpetrated in the respectable name of law:

"*Yosemite National Park.*

"Mr. PAYSON. I ask unanimous consent for the present consideration of the substitute which I send to the desk for the bill (H. R. 8350) to establish the Yosemite National Park, in the State of California.

"The substitute was read as follows:

"AN ACT to set apart certain lands in the State of California as a forest reservation.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the tracts of land in the State of California known and described as follows: Commencing at the northwest corner of township two north, range nineteen east, Mount Diablo meridian, thence eastwardly on the line between townships two and three north, ranges twenty-four and twenty-five east; thence southwardly on the line between ranges twenty-four and twenty-five east to the Mount Diablo base line; thence eastwardly on said base line to the corner to township one south, ranges twenty-five and twenty-six east; thence southwardly on the line between ranges twenty-five and twenty-six east to the southeast corner of township two south, range twenty-five east; thence eastwardly on the line between townships two and three south, range twenty-six east, to the corner to townships two and three south, ranges twenty-six and twenty-seven east; thence southwardly on the line between ranges twenty-six and twenty-seven east to the first standard parallel south; thence westwardly on the first standard parallel south to the southwest corner of township four south, range nineteen east; thence northwardly on the line between ranges eighteen and nineteen east to the northwest corner of township two south, range nineteen east; thence westwardly on the line between townships one and two south to the southwest corner of township one south, range nineteen east; thence northwardly on the line between ranges eighteen and nineteen east to the northwest corner of township two north, range nineteen east, the place of beginning, are hereby reserved and withdrawn from settlement, occupancy or sale under the laws of the United States, and set apart as reserved forest lands; and all persons who shall locate or settle upon, or occupy the same or any part thereof, except as hereinafter provided, shall be considered trespassers and removed therefrom: *Provided, however*, That nothing in this act shall be construed as in anywise affecting the grant of lands made to the State of California by virtue of the act entitled "An act authorizing a grant to the State of California of the Yosemite Valley, and of the land embracing the Mariposa Big-Tree Grove," approved June thirteenth, eighteen hundred and sixty four; or as affecting any bona fide entry of land made within the limits above described under any law of the United States prior to the approval of this act.

"SEC. 2. That said reservation shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be, as soon as practicable, to make and publish such rules and regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation from injury of all timber, mineral deposits, natural curiosities, or wonders within said reservation, and their retention in their natural condition. The Secretary may, in his discretion, grant leases for building purposes for terms not exceeding ten years of small parcels or ground not exceeding five acres; at such places in said reservation as shall require the erection of buildings for the accommodation of visitors; all of the proceeds of such leases and other revenues that may be derived from any source connected with said reservation to be expended under his direction in the management of the same and the construction of roads and paths therein. He shall provide against the wanton destruction of the fish, and game found within said reservation, and against their capture and destruction, for the purposes of merchandise or profit. He shall also cause all persons trespassing upon the same after the passage of this act to be removed therefrom, and, generally, shall be authorized to take all such measures as shall be necessary and proper to fully carry out the objects and purposes of this act.

"Sec. 3. There shall also be and is hereby reserved and withdrawn from settlement, occupancy or sale under the laws of the United States, and shall be set apart as reserved forest lands, as hereinbefore provided, and subject to all the limitations and provisions herein contained, the following additional lands, to wit: Township seventeen, south, range thirty east of the Mount Diablo meridian, excepting sections thirty-one, thirty-two, thirty-three, and thirty-four of said township, included in a previous bill. And there is also reserved and withdrawn from settlement, occupancy or sale under the laws of the United States, and set apart as forest lands, subject to like limitations, conditions, and provisions, all of townships fifteen and sixteen, south, of ranges twenty-nine and thirty east of the Mount Diablo meridian. And there is also hereby reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and set apart as reserved forest lands under like limitations, restrictions and provisions, sections five and six in township fourteen, south, range twenty-eight, east of Mount Diablo meridian, and also sections thirty-one and thirty-two of township thirteen, south, range twenty-eight east of the same meridian. Nothing in this act shall authorize rules or contracts touching the protection and improvement of said reservations, beyond the sums that may be received by the Secretary of the Interior under the foregoing provisions, or authorize any charge against the Treasury of the United States.

"During the reading of the bill—

"Mr. Hooker. I hope that the gentleman who introduced this substitute will see at once that it is going to excite controversy, debate, and discussion that can not fail to take time.

"Mr. Payson. It will not provoke a minute's discussion after a statement is made.

"Mr. Williams (of Ohio). There is evidently a purpose to object to it.

"Mr. Payson. I have not heard any yet, and I hope the Clerk will proceed with the reading.

"The reading of the substitute was resumed and concluded.

"The Speaker. Is there objection to the present consideration of the substitute? The Chair hears none.

"The substitute was adopted.

"The bill as amended was ordered to be engrossed for a third reading; and being engrossed, it was accordingly read the third time and passed."

This, from page 11708 of the Record, shows how the bill fared in the Senate:

"FOREST RESERVE IN CALIFORNIA.

"Mr. Plumb. The Committee on Public Lands instruct me to report favorably the bill (H. R. 12187) to set apart certain tracts of lands in the State of California as forest reservations. The committee, at its meeting some days ago, considered this bill, although it was not there before it in the sense of being actually present, but the subject was there with all its details, and I was instructed to ask the Senate to consider the bill when it should come from the House.

"The Vice-President. Is there objection to the present consideration of the bill?

"Mr. Cockrell. What is the bill?

"Mr. Plumb. It is a bill creating a forest reserve in the State of California, surrounding the Yosemite Reservation. It is recommended by all the California delegation, by the governor of the State, and by the Interior Department.

"Mr. Hale. It ought to have been done years ago.

"Mr. Plumb. It ought to have been done years ago.

"Mr. Ingalls. Has the bill been read?

"The Vice President. It has not.

"Mr. Ingalls. Let it be read for information.

"The secretary proceeded to read the bill.

"Mr. Edmunds. Oh, we can not understand that. Let it go over until to-morrow and be printed.

"The Vice President. The bill will go over.

"Mr. Edmunds subsequently said: I wish to withdraw the objection I made to the House bill just now begun to be read, because it has been explained to me as being one for the preservation of the forests of California, and I do not wish to object.

"There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

"The bill was reported to the Senate without amendment; ordered to a third reading, read the third time, and passed."

And this was the little by-play in Congress, in which no interest (but a private one) was taken and of which Secretary Noble, with unconscious facetiousness, says: "It must be *assumed* that Congress acted *with a full knowledge of all the facts in the case;* at all events, its actions in disposing of the lands is final." Alas! for the dignity of a so-called "Great" republic, whose supreme representative body can so flippantly and thoughtlessly vote away the rights and liberties of citizens whose servant it pretends to be.

And upon this injustice, also, the Divine guidance and blessing were invoked!

This editorial from the Springfield (Mass.) *Republican* of January 3, 1891, is a good sample of the impression produced upon the ignorant by the wickedly false witness borne by the Associated Press:

"If the Kaweah Colony in southern California be a fair sample of Bellamy nationalism, it shows that nationalists are very like some others in wanting what is on the earth, without too close attention to the question of prior rights. Near that colony is a magnificent grove of *Sequoiæ*, 2,675 of them over 45 feet in circumference, and some measuring over 100 feet. Uncle Sam owns the grove and has set it apart as a national park. But this Kawea Colony sees in these trees, which make the most magnificent grove in the world, only so many thousand feet of lumber. The colonists tried to pre-empt the grove under the timber-land act, but the land office at Washington withdrew it from entry. Still road building and other preparations to begin cutting these trees in the spring have gone on until Secretary Noble asked that cavalry be stationed in the grove to keep these apostles of the new civilization at a distance. Their leader, one Haskell, says that cavalry or no cavalry, those trees shall be made into lumber. If he be of the same mind in the spring, the first pitched battle between the old and new order of things may take place on California soil.

These lies were, of course, instantly met and refuted as far as possible. But what could the pens of a few members of the colony avail against the omnipotent machinery of a press subsidized by millionaires?

After a time a good many newspapers began to probe the charges made against the colony and to discover their falsity, and correspondents by the score have denounced them and adduced some astounding instances of land thefts by lumber companies.

In the early part of this year (1891) a petition from Tulare County was forwarded to the Senate and House of Representatives of the United States (which, for lack of opportunity was never presented, thus showing that Secretary Noble's *assumption* that Congress has had all the facts before it is false), pointing out the apparently sinister motive of the act of October 1, giving the history of the colonists, reciting the hardships that will be wrought by the act, and praying for its repeal.

This petition shows the high estimation in which the colonists are held by the leading officials, bankers, and merchants of Tulare County, in the following commendatory language:

"These settlers, comprising what is known as the 'Kaweah Co-operative Colony,' during the four and a-half years of their occupancy of said land, have earned and maintained the highest reputation for commercial integrity and intelligence, and have added largely to the material wealth of Tulare County. They have not only proved their faith by actual settlement and improvement of the land; but they have shown their intention of inaugurating useful industries by the erection of valuable machinery for the development of natural resources, and are in various ways engaged in building up the interests of the locality in which they reside."

Among the names of substantial citizens appended to this petition, the following will be recognized as being strongly representative of the business interests of the county: W. F. Thomas, mayor of Visalia; T. E. Henderson, chairman board supervisors, Tulare County; James Barton, supervisor, Tulare County; J. H. Woody, supervisor Tulare County; S. N. Ellis, supervisor Tulare County; J. H. Fox, supervisor Tulare County; W. J. Newport, ex-supervisor Tulare County; Wm. M. Cross, superior judge Tulare County; D. E. Evans, county recorder Tulare County; E. W. Kay, sheriff Tulare County; M. E. Power, dist. attorney Tulare County; A. E. Neill, justice of the peace; S. A. Crookshanks, school superintendent Tulare County; T. F. Lipscomb, county treasurer; John G. Knox, county clerk; D. E. Coffee, county assessor; C. J. Gidding, cashier bank of Visalia; A. J. Harrell, manager Harrell's Bank, Harrell & Son, bankers, Visalia; N. O. Bradley, attorney at law, Visalia: E. O. Larkins, attorney at law, Visalia; Tipton Lindsey, attorney at law, Visalia; W. B. Wallace, attorney at law, Visalia.

Among these names, it will be noticed, occurs that of Tipton Lindsey, who, in 1885, as receiver of the land office at Visalia, had to refuse the money legally tendered by the colonists for the lands, because commanded by Commissioner Sparks to do so.

These petitioners adduce in support of their prayer the following letter of B. F. Allen, a special agent of the Land Office:

"LOS ANGELES, *March 13, 1890.*

"MR. J. J. MARTIN:

"DEAR SIR: In reply to yours of recent date, I would say that, under instructions from the General Land Office at Washington, I made full inquiry and personal investigation into the matter of timber entries in townships 15 and 16 south and ranges

29 and 30 east, M. D. M., covering what is known as the "Giant Forest," in Tulare County, California. The result of my investigation proved to me conclusively that said entries were made in good faith, that no contest had been filed, and that all legal requirements had been fulfilled by the filers. I found, moreover, that many of the filers were actual settlers, and had associated themselves together as a Coöperative Colony, and were making extensive and valuable improvements, such as it is the purpose and policy of the U. S. Government to foster and encourage. In view of these facts I recommended to the Department at Washington a speedy ruling upon the suspended entries and the reopening of the withdrawn townships to public entry. I can say without hesitation that I have never seen a case of timber entry where the spirit and intention of the land laws were being carried out in better faith. I do not see under these circumstances that any but a favorable decision can be arrived at by the Department, and that speedily.

"Yours truly,

"B. F. ALLEN."

The colonists have never lacked the testimony of the most eminent citizens among their neighbors to their intelligence and integrity; for in December, 1889, in answer to an attack by the San Francisco Chronicle, some twenty-seven public men of Visalia and Tulare County signed their names to a document testifying that for over three years they had known and done business with the colony, and found its representatives to be men of the highest character. Heading these names was that of J. D. Hyde, mayor of Visalia, who in 1885 was the register of the land office, with whom the colonists filed their claims. Better testimony could not be had than of these their intimate neighbors.

The most weighty testimony of all is the report of Land Commissioner Groff to Secretary Noble, which is as follows:

COMMISSIONER GROFF'S REPORT.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 25, 1891.

The honorable the SECRETARY OF THE INTERIOR:

SIR: I have the honor to acknowledge receipt of Department letter of the 12th instant, transmitting copy of opinion of the Assistant Attorney-General relating to the action of certain members of the so-called Kaweah Colony in California, who have filed timber-land applications under the act of June 3, 1878 (20 Stat., 89), upon certain lands now embraced in one of the reservations ("Sequoia National Park") created by acts of Congress approved Sept. 25 and Oct. 1, 1890, and who it is alleged are committing timber trespass upon said lands.

You call my particular attention to the views of the Assistant Attorney-General, expressed on page 10 of his opinion, relative to the status of the entries and filings on the lands now embraced in said reservation, and direct me to report "as soon as possible the different sections falling under the different classifications made, with a view to have the proper remedy made."

The classifications mentioned by the Assistant Attorney-General are (1) lands covered by final entries, (2) lands covered by filings, and (3) lands covered by completed homestead entries.

In order to fully comply with your instructions, I transmit herewith a list of *all* entries and filings, so far as this office has any information, upon lands embraced in the "Sequoia National Park," being townships 15 and 16 south, range 29 E., townships 15, 16, 17, and 18 south, range 30 E., and township 18 south, range 31 east, M. D. B. & M., Cal.

This, strictly speaking, is, perhaps, all that I am required to do; but the affairs of the "Kaweah Coöperative Colony" and their doings and alleged misdoings have been so widely published in the newspapers, and so many conflicting statements made public concerning same, that I deem it proper to furnish you with all information in possession of this office relating thereto.

I place little credence upon newspaper rumors that the members of the "Kaweah Colony," or any other persons, are cutting down and removing the "giant trees" from these lands or otherwise damaging or destroying them. *The parties who write the articles probably have never visited the lands nor been within a hundred miles thereof,** and consequently can have no actual knowledge of the common presumption which they boldly record as a fact.

It is undoubtedly true that the parties referred to have cut down and appropriated ordinary sawlog and smaller trees from the land, but so far as this office has any information, up to the present time, they have only appropriated such trees as were actually necessary for their own buildings, improvements, etc., and have not cut any for sale or disposal. *They have certainly not cut down any "giant trees,"*[*] the minimum size of which the special agent reports as 45 feet in circumference—as they can not safely be felled by any of the ordinary methods in use and no ordinary sawmill could manufacture them into lumber or other timber product.

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*Italics are ours.

I transmit herewith copy of an article published in the New York "Sun," Dec. 31, 1890, and of a letter from J. C. Weybright, dated Sanel, Cal., Dec. 20, 1890; also the original reports of Special Agents B. F. Allen and Andrew Cauldwell on their personal investigation of the lands in question, and the operations of the "Kaweah colony;" all of which indicate that the purpose of these colonists is of a lawful and laudable nature; and that *instead of damaging the lands or destroying the "giant trees" thereon, they have expended about $100,000 in improving the lands and adding to their value, and have guarded and protected the "giant trees" for over five years*, saving them from damage and possible destruction from forest fires on many occasions.

I have read carefully the opinion of the Assistant Attorney-General as to the legal status of the timber-land applications filed by members of the Kaweah colony, and others, upon the lands now covered by the reservation. He holds "that parties who have not made entries of said lands, but have merely made filings thereon, and are cutting timber therefrom, should be considered trespassers and removed from the reservation," and does not approve of either of the methods suggested by this office with a view to the final disposition of the filing of records, vis, to order hearings to establish the question as to their bona fides, or to reject the filings, subject to appeal.

The decisions cited by the Assistant Attorney-General, while they relate to filings in general, do not appear to fully cover the particular cases in question. There seems to have been some element in each case cited foreign to the case now under consideration. There was some question as to the status or character of the lands; or some adverse right or claim had attached or was in dispute; or the claimants had not complied with all of the requirements of the law. *None of these questions are at issue in the present cases.* The lands surveyed were unappropriated and uninhabited public lands, valuable chiefly for timber, and subject to entry under the act of June 3, 1878 (20 Stat., 89); the claimants filed their applications, submitted proof, tendered the purchase money, and *in every way complied fully with all the requirements of law.*[†] In the case of Worth vs. Branson (98 U. S., p. 118) the Supreme Court said:

"The rule is well settled by a long course of decisions that when public lands have been surveyed and placed in the market, or otherwise opened to private acquisition, a person who complies with all the requisites necessary to entitle him to a patent in a particular lot or tract is to be regarded as the equitable owner thereof, and the land is no longer open to location. The public faith has become pledged to him, and any subsequent grant of the same land to another party is void, unless the first location or entry be vacated or set aside."

The Department, in the case of "Heirs of William French" (L. D., vol. 5, p. 88), referring to above decision, held that where an applicant for timber lands under the act of June 3, 1878 (20 Stat., 89), had done all that he was required to do under the law, and had tendered his money; the tender of the money, so far as the applicant's rights are concerned, was equivalent to the actual payment of the same.

I most respectfully call your most particular attention to the material distinction made by the Supreme Court between the case of Frisbie vs. Whitney (9th Wall., p. 194), where the claimant was unable to fulfil all the requirements of the law, but "did all that was in the power of any one to do" in the premises; and the case of Wirth vs. Branson (98 U. S., p. 118), where the claimant not only did all that was in the power of any one to do, but complied fully "with all the requisites necessary to entitle him to a patent." That is precisely what these parties did; so far as they are concerned they complied fully with all the requirements of the law, and the default in carrying the claims to a patent is through failure of the Government to act in the premises.

The list transmitted herewith of timber-land filings made by the supposed members of the Kaweah Colony in Tps. 15 and 16 south, ranges 29 and 30 east, shows that the applications were filed between Oct. 5 and Oct. 30, 1885; that the orders of the Commissioner of the General Land Office suspending the lands in said townships from entry or filing were issued Dec. 2, 1885, by telegram, and Dec. 24, 1885, by letter; that the parties submitted proof and tendered payment for the lands between Dec. 29, '85, and Jan. 19, '86, and that they appealed from the action of the register and receiver in refusing to accept their money and make their entries of record, between Jan. 18 and 20, 1886.

At the time the parties filed their applications *the lands were* NOT *suspended from entry or filing, or reserved in any way, and were legally subject to such filings under the act of June 3, 1878*[*] (20 Stat., 89); but before the expiration of sixty days' publication required by said act, for the *sole* purpose of admitting adverse claims to be filed, if there be any, the orders of the Commissioner of the General Land Office were issued suspending the entire township named, and others, from entries or filings. No adverse claims have been filed for any of said lands up to date hereof, so far as this office has information, and if the suspension of the Commissioner of the General Land Office had been removed at any time prior to the reservation of these lands by the act of Congress, the claims of these parties would undoubtedly have been allowed, their money accepted, their entries allowed as of date of making proof and tendering payment, and their rights attach *from date of filing their applications.** It seems clear to me that the filing of these applications and the subsequent submission of final proof and tender of money prior to reservation of the lands by Congress *vested the parties with an inceptive right to the lands which the Government is bound to recognize*.*

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[*] Italics are ours.

[†] Italics are the Commissioner's.

The suspension of these townships from entries and filings was *based upon a supposition of fraud or irregularities in the surveys, and a presumption of fraudulent entries thereon.* Over five years have elapsed since the suspension was made, and up to date hereof no positive evidence has been secured to substantiate the allegations of fraud either in the surveys or entries of the lands, nor to prove that there were good and sufficient grounds to warrant the suspension. But even if the suspension was in every way justifiable, *it could not, and did not, deprive the claimants of any rights which they may have acquired*, IT SIMPLY HELD THEM IN ABEYANCE.*

There can be no question as to the right of the Commissioner of the General Land Office to suspend from *original* entries and filings any portion of the public lands for reasons which to him appear sufficient and for the public good. But such suspension can only take effect from and after the date thereof; *it can not be retroactive;* and it is a question whether it could apply to and estop action on entries or filings, legally initiated prior thereto, in which the parties were proceeding in strict accordance with and under authority granted them by Congress, and in which no adverse claims have been filed, without granting them a hearing or giving them any recourse whatsoever in the matter.

I have no disposition or desire to shield, or attempt to shield, any man or association of men who are engaged in attempting to acquire public lands by fraudulent or illegal methods; but common justice demands that no man should be adjudged guilty of such actions upon mere allegations or *ex parte* evidence. Any of the individuals who, while the lands were legally subject to entry under the act of June 3, 1878 (20 Stat., 89), made affidavits and filed applications under said act, to purchase lands now embraced in said reservation, did so in good faith and in the proper and regular manner provided by law; and if they acquire any rights whatever thereby, their claims are entitled to full and careful consideration by the Government, and should not be ignored upon any mere technicality. The rights of each individual should be respected and protected, and no honest, bona fide claimant should be compelled to suffer for the wrong doings of others, nor should any association or individual be permitted to acquire rights which justly and legally belong to such claimant.

I fully appreciate the public necessity of protecting the "giant trees" and other natural wonders in the reservations created by acts of Congress, and of removing all intruders therefrom. I have no sympathy with syndicates or associations who attempt to acquire public lands by fraud or evasion of the law; but individuals, even though the innocent dupes or tools of such, who have in good faith attempted to acquire rights granted them by law, and who have expended their money and hard labor in trying to acquire such rights, have my full sympathy.

All of the claims, of the same character, to lands in the townships now embraced in the "Sequoia National Park" must stand upon the same footing. It may be that some of the filings are fraudulent or illegal in their inception, but there is no proof of such on record. On the face all the claims appear to be bona fide, and to have been made in absolute good faith, and the requirements of the law fully complied with, so far as the applicants are concerned.

I transmit herewith letter of Geo. H. Bodden, dated Visalia, Cal., Sept. 27, 1890, enclosing the sworn statement of a number of persons who have filed timber-land applications for certain lands in township 17 south, range 30 east (not within the so-called "Kaweah Colony" settlement), in which they claim that they each made their entries in entire good faith for the use and benefit of the entrymen, and not for the use and benefit of any other person or persons. They further claim that *there are no "giant or mammoth trees" in said township,*† and they offer to pay the expense of an investigation to establish that fact. The county officers of Tulare Co., Cal., certify that the men who made the statements are reputable citizens and enjoy the confidence and esteem of the community. There is nothing in this office to show that these men are members of, or in any way connected with, the Kaweah colony.

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*Italics are ours.

†Italics are the Commissioner's.

It seems to me that every one of the persons who filed an application under the act of June 3, 1878 (20 Stat., 89), in the manner indicated, and proceeding in accordance with the provisions of said act, submitted proof and tendered the purchase money for the land prior to reservation thereof by Congress, is entitled to a hearing, and *if he can positively establish his bona fides** under said act, he is entitled either to a patent or to have his land condemned for public use, and proper appropriation made by Congress to indemnify him for his labor and money expended.

My only object in entering into the subject so fully is to positively and permanently settle all question as to title to the lands in question, and to secure *all* of the lands reserved by acts of Congress approved Sept. 25 and Oct. 1, 1890, for the purposes designated by such acts.

In your letter of the 12th instant you further direct: "You will also report whether, if you know, these colonists have combined to place their titles in the hands of a single corporation."

In reply thereto I have to state that all the information this office has on that subject is contained in the report of Special Agent Cauldwell of July 16, 1890, and the affidavits submitted herewith (original herewith). Your attention is respectfully called to the following extracts therefrom:

"I have to report that I have found it a difficult matter to determine exactly how many of the claimants have quitclaimed or assigned their claims to the Colony Company. . . . . I am also satisfied that nearly all of those timber entrymen who made these quitclaim deeds did so through a misinterpretation of the law, their attorneys having advised them that having once tendered their final proof and money in payment for their land they could subsequently deed their equity in their claims to the Colony Company, notwithstanding the fact that the Land Office had refused to receive their proof and money."

The several papers referred to as being transmitted with this report are as follows:

List of entries and filings on lands covered by the "Sequoia National Park," being townships 15 and 16 south, range 29 east, townships 15, 16, 17, and 18 south, range 30 east, and township 18 south, range 31 east, M. D. B. & M., Cal.

Copy of article relating to the "Keweah colony" published in the New York "Sun," Dec. 31, 1890.

Copy of letter from J. C. Weybright, dated Sanel, Cal., Dec. 20, 1890. File No. 1891—5364.

Report of Special Agent B. F. Allen, dated Oct. 22, 1889. File No. 1889—128775.

Report of Special Agent Andrew Cauldwell, dated July 16, 1890. File No. 1890—91648.

Letter of Geo. H. Bodden, dated Visalia, Cal., Sept. 27, 1890, transmitting sworn statements of certain parties who have filed timber-land applications in township 17 south, range 30 east. File No. 1890—121950.

In addition to the above-mentioned papers, I have the honor also to transmit herewith the following-described papers relating to the cases in question:

Letter from Frederick Scrimshaw, dated Brooklyn, N. Y., Feb. 2, 1891, transmitting copy of a petition to Congress signed by prominent officials of the city of Visalia and Tulare County, Cal., praying for a repeal of the act of Congress reserving townships 15 and 16 south, ranges 29 and 30 east, for a national park. File No. 1891—16990.

Appeals and affidavits submitted by B. G. Haskell, attorney for claimants, through Special Agent Andrew Cauldwell. File No. 1891—19126.

Appeal and brief forwarded by B. G. Haskell, attorney for P. R. Martin *et al.* File No. 1891—20829.

As I have retained no copies of the original papers transmitted herewith, I most respectfully request that they be returned to me, with your directions in the premises.

Very respectfully,

LEWIS A. GROFF,
Commissioner.

Herewith are given several specimens of malignantly mendacious journalism. They are from the Los Angeles Evening Express, and are given here because they represent the spirit that inspires the colony's enemies. They are not worth reproducing save that they show from what a filthy cesspool of vituperation the associated press of the country ladled the mud which they for a week flung at the colony.

On the 16th of April this sheet had this heading of its "story":

"KAWEAH COÖPERATORS.

"Bellamy's scheme as it worked in Tulare County.

"A shameful revelation of theft, delusion, cruelty, and oppression, whereby the Government was sought to be robbed and numbers of ignorant and confiding people swindled—the ringleaders in the toils."

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* Italics are ours.

It had also this editorial:

"STEALING A FOREST.

"The Express this evening contains in its local columns an exposé of a fraud of magnitude, which was conceived for the purpose of cutting down the Giant Sequoia forest in Tulare County. Congress having reserved this wonderful forest for a national park, the shemers, in defiance of law, have set about carrying their nefarious project into effect. The labor by which this conspiracy was being carried out was furnished by a number of dupes who had been influenced by a desire to put their socialistic ideas into action. *As the Government will have a troop of cavalry in the forest before the first of May these depredations will be pretty effectually checked.* It is some satisfaction to know that *the ringleaders in this vandal raid* are all in custody and pretty certain to be punished."

And this on April 17th:

"As they built their roads and other work in the colony by the payment of their own members with what were called 'time checks,' which checks represented time and not money, and were payable only in kind, it is likely that the projectors of this wonderful enterprise *have salted away a very comfortable sack.*"

Not content with committing this indecent contempt of court (which in England would have landed the writers thereof in jail), it again, on April 18, opened its vile sewer of malignity with a three-column lie.

"THE KAWEAH SWINDLE.

"More of the story of the schemers and their dupes.

"After deluding the miserable colonists they attempt to deceive the Los Angeles public. Some of the flowery language in which Haskell described life in the colony. What will the people of the colony do?"

Amongst the many false accusations is this, intended, evidently, to stir up the mob to the point of desiring to lynch somebody:

"THEY PROPOSE TO USE FORCE.

"It seems that Haskell and his friends had glued themselves to the Giant Forest lands and proposed to hold them against outsiders and the Government by force."

And it winds up with this:

"WHAT WILL THEY DO?

"Undoubtedly the Kaweah colony will be broken up. . . . What will they do? If there is not actual suffering for food amongst them very shortly, it will only be because they have been able to see far enough to get away. Meanwhile what should be done with the swindlers? Certainly they should not be allowed to go unscathed for their crimes. The authorities of Tulare County should see to it that this shameful imposition shall not remain unpunished, a blot on their county.

"To the Express belongs the credit of delving into and bringing to light this nefarious fraud, and doing so the assertion is ventured that many persons are rescued from falling into one of the foulest pitfalls ever devised by rascals."

But no sooner had this infamous concoction been telegraphed all over the country than its falsity was exposed. Joseph R. Buchanan, of the American Press Association of New York, formerly of Denver, a noted labor editor and writer, and a gentleman having a personal acquaintance with the founders of the colony, was shown the telegraphic dispatch, and immediately wrote out a general and particular denial of the charges, which was telegraphed along with, and appeared immediately under, the lie.

Not only did the Kaweah colonists not thank the *Express* for having exposed "the swindlers," but they undertook to expose the exposer thus:

"THOSE STARVED CHILDREN.—WHAT THE LADIES OF KAWEAH SAY ABOUT IT.

"SETTLEMENT OF THE KAWEAH COÖPERATIVE COLONY,
"KAWEAH, TULARE COUNTY, CAL.,
"*April 27, 1891.*

"*To the American people:*

"We, the mothers and women of Kaweah colony, in Tulare County, California, having read with indignation in the Los Angeles Express of April 18, and in the Associated Press telegrams all over the country, the next day, a so-called 'exposé' of the condition of things in Kaweah, herewith wish to refute the base falsehood therein made current.

"Mrs. Vianna Goodwin, a late member, says: 'I don't believe there is a mother in Kaweah but cries herself to sleep more nights than she don't.' This has not been our experience. Mrs. Goodwin had no children here to cry herself to sleep over, and if she cried over ours we never knew it, and her tears are wasted unless, indeed, she wept because they were and are healthy, honest, and happy.

"'Fifteen children are said to have died in the colony last year of an epidemic caused by insufficient sustenance.' There were just four deaths altogether in the colony last year. Two (Andrew Larsen and Mr. Pierce) were adults who died of consumption after having come here, as they themselves said 'to spend their last days with us.' Of the others, one was an old lady, Mrs. Tousley, the other a child, Georgie Dillon; the cause of death was dysentery. If it can be said of them that they died for want of proper sustenance, the same may be said of thousands of others who died of the same disease throughout our land last year. No! Instead of our children suffering for want of food, they are as hearty and robust children as you will not often find. Mrs. Forster, who has been in the colony one year, wishes to state that this is the first year in forty that she has not been under the doctor's care. She has three children, all of whom have also been under a physician's care since their birth until coming here. Now they are healthy, happy children.

"Instead of mourning our lives away because we have been 'entrapped,' joy is depicted on our countenances, and there is a song of praise welling up in our hearts, joy that we are in Kaweah colony. Here our children are not subject to the temptations that they would be in the outside world, for we have here no saloons and their attendant evils. Here it is comparatively easy for our children to do right.

We regret for the credit of our sex that Mrs. Goodwin should have given currency to stories so *false* and malicious as those we now deny. Had she remained among us perhaps she would not again have taken up the slanderous habits of the outside world.

Very respectfully,

Mrs. B. C. Purdy, Mrs. J. H. Redstone, Mrs. Myra Hoyt, Mrs. S. D. Bishop, Mr. M. E. Bellah, Mrs. A. Jamieson, Mrs. Dove Brann, Mate A. Hildebrand, Mrs. A. A. Forster, Mrs. M. Herschede, Mrs. Annie H. Haskell, Mrs. E. Avery, Abbie C. Purdy, Mrs. Vernie Boggs, Mrs. Henrietta Elford, Mrs. Anna Taylor, M. K. Young, C. E. Christie, M. L. Dillon, C. Gowan, Mrs. M. L. Owen, Aggie Evans, Mrs. Kate Bown, Marie Sandberg, Edna Tousley, Mrs. Sam Bellah, Mary Carpenter, Kate B. Redstone, C. C. Westervelt, Annie Bellah, Mrs. B. K. Smith, Mrs. H. M. Jones, Emma Purdy, E. Richardson, Mary E. Carpenter, Jennie M. Hunter, A. Bellah, Mrs. N. Joy.

Thus the Express was shown to be a "continental liar." This mother's manifesto was also widely published.

In a little while time, which "tries all things," brought the reaction, and the papers began to see that there was "another side" to be heard.

The Tulare County Times, the nearest neighbor of the colony, in its issue of April 16, editorially pointed out that the Noble gun, which was discharged from the muzzle at Kaweah, has kicked at the breech, and hurt others not intended. It says:

"THE KAWEAH COLONISTS.

"The press in other sections of the State is beginning to understand the hardships that may be entailed on settlers in other localities, if the decision of Secretary Noble, dispossessing the Kaweah colonists, is affirmed by the courts. After spending their time and money and complying with the law in every particular, settlers may wake up any morning and find that Congress has made a grant or reservation covering their lands and depriving them of all rights in the premises. *This is a violation of every canon of good faith, and places the settler at the mercy of Congressional whims.* The law has set forth the process for acquiring title to Government land. When a man settles and locates he has taken the initial step. To say that he acquires no rights till he has been granted a patent, is a gross denial of justice. The settler relies upon the good faith of the Government, but if he has no security that when the time comes for proving up that he will be allowed to do so, *he has been beguiled by false pretenses.* When the settler makes his initial step for securing title, he has acquired *a vested right* in the premises with which the Government has *no moral right to interfere*, unless the settler himself neglects the course designed by law, and by his own laches forfeits his claim.

"In the Kaweah case the loss of the settlers will be shared by Tulare County at large, unless the decision be reversed by the courts. It was the intention of the colonists to start up several manufactories this spring, and but for Secretary Noble's decision, the end of the year would probably have found several thousand people at

Kaweah City. There was a project for building a railroad from Kaweah City to Visalia, and, judging by what they have accomplished in the past, they would have carried it to a successful conclusion. The colonists are law-abiding and above the average in intelligence, *and they have done as much to advertise Tulare County as any men in it.* If Secretary Noble's decision stands, the colony will be practically broken up, and the thousands who stand ready to come here when the Secretary gives the word, will go elsewhere to form a settlement.

"They have complied with the law, and are therefore entitled to patents. Morally, if not legally, the Government had disposed of all but reversionary right in those lands long before the Kaweah reservation was made by act of Congress."

The Mariposa Gazette, in no way interested in Kaweah, comes out strongly in condemnation of the destructive act, in the following of April 23:

"The act of Congress creating the new national park, approved October 1st, 1890, * * * set apart for said park townships 1 and 2 north, of ranges 19 to 24, inclusive; townships 1 and 2 south, of ranges 19 to 25, inclusive; townships 3 and 4 south, of ranges 19 to 26, inclusive; Mount Diablo base and meridian, in California, covering an area of forty-two townships, or about 932,600 acres, exclusive of the Yosemite Valley grant, of which territory an area equal to eighteen townships, or about 399,700 acres of land, exclusive of the Yosemite Valley grant, is in Mariposa County.

"All this territory—excepting the original Yosemite Valley grant—and *bona fide entries of land made within the lands above described, under any law of the United States, prior to the approval of this act,*" shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be to make regulations providing *for the preservation from injury of all timber, mineral deposits, natural curiosities, or wonders within said reservation, and their retention in their natural condition.*

"These being, then, according to the act, the object for which 932,600 acres were taken from the people in general and from the available resources of the people of Mariposa, Tuolumne, Mono, and Fresno counties in particular, and by which the destiny is affected of several hundred, if not a thousand, of American families, without their knowledge or consent, and, as far as they are concerned, by an arbitrary action as one would only look for in Russia, it is in order to analyze these objects, and to see if the results that would be produced by carrying them out will outweigh the injuries inflicted. The first object mentioned, or duty made incumbent on the Secretary of the Interior to carry out, is *the preservation from injury of all timber.* A very laudable object indeed.

"But whilst Congress saw fit to deprive the counties of Mariposa and Tuolumne of the greatest part of their timber resources, its anxiety for the preservation of forests has not extended to any other forests of this State; the timber lands of other parts of the Sierra Nevadas, the redwoods and pineries of the coast and northern counties have not been included in this exhibition of Congressional care; nay, only a few weeks ago, 26,095 acres of timber land in Mendocino County were thrown into the market. Under these circumstances, does it not look as if the ostensible object of preserving forests is *only a false pretense assumed to hide the real object, which dare not be disclosed?*

. . . .

"We have now examined the three objects which Congress, by its acts, entrusts to the care of the Secretary of the Interior. But it ought to have stated another object, for the results of this act in another direction are so certain, that they must have been foreseen, and as the contemplation of these results did not deter it to pass the act, those results must have been one of the objects. *It is the extinction and prevention of agriculture and horticulture on some of the finest agricultural mountain lands in the State.* A portion of township 4 south, of range 19 east, is one of the most fertile, and has been one of the longest settled, districts of Mariposa County, simply because the first settler who came here picked, naturally, the best places to settle on. There are now farms there, which are model farms in every respect. On the Merced River are choice spots, which by reason of the mildness of the climatic conditions and the facilities for irrigation, are unsurpassed for fruit-raising, and consequently magnificent orchards have been, and more can be, established there. There are other choice spots, where people have settled years ago, and built homes for themselves and their families.

"What is to become of these settlements? The act says: *That nothing in this act shall be construed as in anywise affecting * * * any bona fide entry of land made within the limits above described under any law of the United States prior to the approval of this act.*

"This means that private claims shall be respected. But what will these private claims be worth if all the country around them is doomed to remain a wilderness forever, and prevented from becoming settled?

. . . .

"But, on the other hand, we notice that Secretary Noble, during the very first month after the reassembly of Congress, in January, 1891, reported to Congress that it would be impossible to have a Yosemite park under Government control with a multitude of private claims in it, and recommended that Congress should take steps to buy all private claims out. If that is done the country will see a number of millions engulfed in the settlement of these claims—apparently all for the edification of tourists—for nobody pretends that these claims could be bought out for the prices the Government charges the people, plus actual cost of improvements. The care and toil bestowed upon each home for years, and future prospects, are entitled to be recognized. But no matter what price the Government may be induced to pay, it will never be anything like the price these places would in time be worth, if the country is left to its own development, free from Government interference.

"A look around over this fair State shows what our people can do if left to their own enterprise and resources. And the resources of the lands of the Yosemite Park are so large and so undeveloped that the very idea of their being buried under the pall of a Government park becomes abhorrent. And, supposing the Government buys out all the old settlers and claimants in the park, what is to become of these places? Are they to be left to fall into decay and ruin, or are they to be worked and kept up? In the latter case, by whom? The American independent settler has been bought out, and he will naturally leave; his place can only be taken by tenants. Is then this foreign curse of landlordism and tenantry to be actually introduced by the United States Government itself? . . . .

"The avowed object of preserving forests appears to be only a false pretense to cover up the real object of the scheme, whatever it may be. * * * If, on the other hand, these claims are respected, it will condemn hundreds of settlers to poverty; if, on the other hand, these claims are bought, it will entail an expense of many millions on the country, whilst the claimants themselves will never receive anything like the amount their properties would be worth in the course of time."

The Tulare County Times, on April 30, again perforated the pretenses of the Government, thus:

"The Government withdrew the land from sale because of the *supposed* fraudulent entries, and because the survey was *presumed* to be incorrect. Yet people had acquired title previous to the time the colonists filed, and received patents based upon the survey. In setting apart the Sequoia National Park the Government used the same survey, thus recognizing its correctness.

"The Keweah colonists are not the only sufferers by the now-you-see-it and now-you-don't-see-it policy of the land department. Many citizens of this county had filed on timber land within the boundaries of the present reservation years before it was set apart as a park, and all who did are being put to annoyance and expense."

The Voice, of New York City, the prohibition paper, of April 23 and 30, spoke up well, and suggested "that the Farmers' Alliance members of the next Congress would find this a suitable case in which to interest themselves."

Lack of space forbids the citation of the many indignant comments that have been uttered by that part of the press that has been brave enough and honest enough to protest against this outrage on liberty in the name of law. Besides those already quoted may be mentioned the Redlands Citrograph, the Kern County Gazette, the Gilroy Advocate, the Stanislaus News, the Stockton Mail, and the Porterville Farm View. In these days of venality, corruption, and the suborning of the press by the money power, it is refreshing to be able to point to such a goodly list of uncorrupted champions of the natural rights of American citizens. May their number be multiplied.

EXHIBIT No. 8.

HASKELL'S APPEAL.

[Copies on file in U. S. Land Office.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April, 1891.

I, Thomas H. Carter, Commissioner of the General Land Office, do hereby certify that the annexed copies of papers relating to timber land application of Burnette G. Haskell, embracing the SW. ¼ of section 2, township 16 south, of range 29 east, Mt. D. B. and meridian, California, are a true and literal exemplification of said papers on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

THOMAS H. CARTER,
Commissioner of General Land Office.

No. 174.

Land Office at Visalia, California. *In re* **application of Burnette G. Haskell to purchase certain timber lands under act of June 3, 1878.**

Supplemental affidavit.

STATE OF CALIFORNIA, *County of Tulare, Land Office at Visalia, ss:*

Burnette G. Haskell, being duly sworn according to law, deposes and says: That he is a white male citizen of the United States, over the age of 21 years, and has been duly and regularly admitted to practice as an attorney at law. That he is the attorney for the above applicant, and acquainted with the facts of the case; that the Register and Receiver of the United States Land Office at Visalia have refused to allow said claim to be formally perfected as permitted by law, basing such refusal upon instructions from the G. L. O., which instructions, however, give no reasons for such action. That affiant is informed that such action was taken by the Hon. Commissioner of the G. L. O., because said Commissioner was informed anonymously that the "fact of there being at the same time some 60 entries was a suspicious circumstance." Consequently this deponent avers as follows:

That said entries were not made all at one time, but extended over a space of nearly a month; that they were not made in any suspicious way whatever. That, however, many of these claimants are known to each other and are members of a real estate purchasing society which, for a stated price, furnishes them with information concerning desirable private investments, and that when the timber land in question was reported by said society as being subject to entry it was not reported to these filers alone, but to over a thousand other citizens, and was a matter of public notoriety. That the claim above named was carefully examined by the applicant and was, deponent is informed and believes, entered by him for his own exclusive use and benefit, and in no manner whatever in violation either of the spirit or letter of the law. That the deponent files this supplemental affidavit for the purpose of placing the said cause in position for speedy decision and to negative at once all anonymous objections, not made matters of record, if any such shall really exist.

BURNETTE G. HASKELL.

Subscribed and sworn to before me this 16th day of January, 1886.

J. D. HYDE,
Register.

Notice of application to purchase timber land.

U. S. LAND OFFICE,
Visalia, Cal., October 5, 1885.

Notice is hereby given that in compliance with the provisions of the act of Congress approved June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory," Burnette G. Haskell, whose post-office address is 1236 Twenty-first street, San Francisco, Cal., has this day filed in this office his application to purchase the SW. ¼ sec. No. 2, in tp. No. 16 S., R. No. 29 E., of the Mt. D. meridian.

All persons holding any adverse claim thereto are required to present the same at this office within sixty days from the first publication of this notice.

4251.

J. D. HYDE,
Register.

Affidavit of publication.

STATE OF CALIFORNIA, *County of Tulare, ss:*

J. O. Blakeley, being duly sworn, upon his oath deposes and says: My name is J. O. Blakeley; I am a resident of the county of Tulare, in the State of California, and am over the age of twenty-one years; I am now, and ever since the 1st day of October, 1885, have been publisher of the Weekly Visalia Delta, a newspaper printed and published in Visalia in said Tulare County, and as such had charge of all the advertisements in said newspaper since said 1st day of October, 1885.

And I further state that the land notice, of which the copy annexed on the margin hereof is a true printed copy, which printed copy is hereby referred to and made a part hereof, was published in said newspaper once each week for ten successive weeks, as follows, the said notice being in each and every number of the regular and entire issue, and not in any supplement thereof, and during each and all the times specified, to wit:

In the issue of October 15, 1885; in the issue of October 22, 1885; in the issue of October 29, 1885; in the issue of November 5, 1885; in the issue of November 12, 1885; in the issue of November 19, 1885; in the issue of November 26, 1885; in the issue of December 3, 1885; in the issue of December 10, 1885; in the issue of December 17, 1885.

Subscribed and sworn to before me this 30th day of December, 1885.

J. O. BLAKELEY.
J. D. HYDE,
Register.

U. S. LAND OFFICE,
Visalia, Cal., October 5, 1885.

Notice of application to purchase timber land.

Notice is hereby given that, in compliance with the provisions of the act of Congress approved June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory," I, Burnette G. Haskell, whose post-office address is 1236 Twenty-first st., San Francisco County, Cal., has this day filed in this office his application to purchase the SW. ¼, section 2, in township No. 16 S, range No. 29 E., of the Mt. D. meridian.

All persons holding any adverse claim thereto are required to present the same at this office within sixty days from the first publication of this notice.

J. D. HYDE,
Register.

I hereby certify that the foregoing notice was posted in this office on the 5th day of Oct., 1885, and remained posted until the 30th day of December, 1885. I further certify that there are no adverse claims to the land herein described known to this office.

J. D. HYDE,
Register.

Sworn statement under act of June 3, 1878.

LAND OFFICE AT VISALIA, CAL.,
December 30, 1885.

I, Burnette G. Haskell, of San Francisco County, State of California, desiring to avail myself of the provisions of the act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," for the purchase of the S. W. ¼ of section two, township sixteen south, range twenty-nine east, do solemnly swear that I* am over the age of twenty-one years, and a native-born citizen of the United States; that the said land is unfit for cultivation, and valuable chiefly for its timber and stone; that it is uninhabited; that it contains no mining or other improvements nor, as I verily believe, any valuable deposit of gold, silver, cinnabar, copper, or coal; that I have made no other application under said act; that I do not apply to purchase the land above described on speculation but in good faith to appropriate it to my own exclusive use and benefit; and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title which I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself; that the money tendered by me is veritably my own and not borrowed for the purpose.

BURNETTE G. HASKELL.

Sworn to and subscribed before me this 30th day of Dec., 1858.

J. D. HYDE,
Register.

Indorsed: Timber lands, act of June 3, 1878. Sworn statement. Land Office at ——. Sec. ——, township ——, range——.

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* In case the party has been naturalized, or has declared his intention to become a citizen, a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished.

Sworn statement under act of June 3, 1878.

LAND OFFICE AT VISALIA, CAL.,
1236 Twenty-first St., October 5, 1885.

I, Burnette G. Haskell, of San Francisco, California, desiring to avail myself of the provisions of the act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory" for the purchase of the S. W. ¼ of section 2, in township 16 S., of range 29 E., do solemnly swear that I* am a native-born citizen of the United States over 21 years old; that the said land is unfit for cultivation and valuable chiefly for its timber; that it is uninhabited; that it contains no mining or other improvements, nor, as I verily believe, any valuable deposits of gold, silver, cinnabar, copper, or coal; that I have made no other application under said act; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit; and that I have not, directly or indirectly, made any agreement or contract in any way or manner, with any person or persons whomsoever, by which the title which I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself.

BURNETTE G. HASKELL.

Sworn to and subscribed before me this 5th day of October, 1885.

J. D. HYDE,
Register.

Indorsed: Timber-lands act of June 3, 1878. Sworn statement. Land office at Visalia, Cal. S. W. ¼ sec. 2, township 16, range 29. Burnette G. Haskell [9296-20000]. Filed Oct. 5, 1885. J. D. Hyde, register. John Mullan appears for applicant, 88-64502. S. S. T.

Testimony of witness under act of June 3, 1878.

Charles F. Keller, being called as a witness in support of the application of Burnette G. Haskell to purchase the SW. ¼ of section two, township sixteen south of range twenty-nine east, testifies as follows:

Ques. 1. What is your post-office address, and where do you reside?

Ans. My residence and post-office address is the town of Traver, Tulare Co., Cal., about 18 miles from Visalia.

Ques. 2. What is your occupation?

Ans I am a farmer, and merchant in Traver; owner of the public hall in said town.

Ques. 3. Are you acquainted with the land above described by personal inspection of eachof its smallest legal subdivisions?

Ans. Yes, and with each and every portion thereof.

Ques. 4. When and in what manner was such inspection made?

Ans. By assisting at surveys of the same. By at least four visits to and close inspection. All these visits made in the year 1885.

Ques. 5. Is it occupied; or are there any improvements on it not made for ditch or canal purposes, or which were not made by, or do not belong to, said applicant?

Ans. It is not occupied, nor are there any improvements upon it of any character whatever belonging to or made by anybody.

Ques. 6. Is it fit for cultivation?

Ans. It is entirely unfit for cultivation, and would still so continue to be if all the timber upon it were cleared away.

Ques. 7. What causes render it unfit for cultivation?

Ans. Its high altitude, its inaccessible and rocky character, its deep ravines and steep sides, the absence of agricultural soil, and the heavy growth of brush and timber. When said timber is cleared away, in my opinion, it would be just as unfit for cultivation as before.

Ques. 8. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

Ans. There are none. If any lie deep below the surface and at present undiscoverable from the character of the country, I believe they would be but mere traces or blind leads of no value whatever.

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*In case the party has been naturalized, or has declared his intention to become a citizen, a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished.

Ques. 9. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. It is valuable only for its timber or stone. For no other purpose that I can conceive of.

Ques. 10. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. Because I am a practical farmer, and know what land is good for. This land is good for nothing except for its timber or stone, and this because of absence of agricultural soil, deep canons, steep sides, high altitudes, and heavy growth of timber and aggregations of rift rock and boulder.

Ques. 11. Do you know whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?

Ans. I do not; but I am informed and believe that the applicant purchases in good faith for the purpose of developing the timber for his own exclusive benefit.

Ques. 12. Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?

Ans. I am not.

CHARLES F. KELLER.

I hereby certify that witness is a person of respectability; that each question and answer in the foregoing testimony was read to him before he signed his name thereto, and that the same was subscribed and sworn to before me this 30th day of December, 1885.

J. D. HYDE,
Register.

NOTE.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testified falsely, to prosecute him to the full extent of the law:

[Title LXX.—Crimes.—Ch. 4]

SEC. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any writen testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oaths states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. [See § 1750.]

Indorsed: Timber lands. Act of June 3, 1878. Testimony of witness. Land Office at Visalia, Cal. Section 2, township 16, range 29.

Testimony of witness under act of June 3, 1878.

Paul M. Narboe, being called as a witness in support of the application of Burnette G. Haskell to purchase the SW. ¼ of section two, township sixteen, south of range twenty-nine east, testifies as follows:

Ques. 1. What is your post-office address and where do you reside?

Ans. My post-office address and residence are both at Visalia, Cal.

Ques. 2. What is your occupation?

Ans. I am a surveyor.

Ques. 3. Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivisions?

Ans. Yes, and with each and every portion thereof.

Ques. 4. When and in what manner was such inspection made?

Ans. By surveying and inspecting the same five or six different times. By surveying the same in 1883.

Ques. 5. Is it occupied; or are there any improvements on it not made for ditch or canal purposes or which were not made by, or do not belong to, the said applicant?

Ans. It is not occupied nor are there any improvements upon it of any character whatever belonging to or made by anybody.

Ques. 6. Is it fit for cultivation?

Ans. It is entirely unfit for cultivation, and would still continue so to be if all the timber upon it were cleared away.

Ques. 7. What causes render it unfit for cultivation?

Ans. Its high altitude, its inaccessible and rocky character, its deep ravines and steep sides, the absence of agricultural soil, and the heavy growth of brush and timber. When said timber is cleared away, in my opinion, it would be just as unfit as before for cultivation.

Ques. 8. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

Ans. There are none. If any lie deep below the surface, and at present undiscovered, from the character of the soil I believe they would be mere traces or blind leads of no value whatever.

Ques. 9. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. If valuable at all it is only valuable for its timber or stone. It is not valuable for anything else.

Ques. 10. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. Because those are its only products. Because there is no proper soil for any agricultural purposes.

Ques. 11. Do you know whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?

Ans. I do not; but I am informed and believe that the applicant purchased in good faith for the purpose of developing the timber for his own exclusive benefit.

Ques. 12. Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?

Ans. I am not.

PAUL M. NORBOE.

I hereby certify that witness is a person of respectability; that each question and answer in the foregoing testimony was read to him before he signed his name thereto, and that the same was subscribed and sworn to before me this 30th day of December, 1885.

J. D. HYDE,
Register.

NOTE.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

[Title LXX.—Crimes.—Ch. 4.]

SEC. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. [See § 1750.]

Indorsed: Timber lands. Act of June 3, 1878. Testimony of witness. Land office at Visalia, Cal. Section 2, township 16, range 29.

Land Office at Visalia, California, In re. Application of Burnette G. Haskell to purchase certain timber lands under act of June 3, 1878.—No. 174.

To the register and receiver of said land office, and to all others whom it may concern:

Please take notice that the claimant herein appeals from the decision in the above-entitled proceeding made by the register at Visalia, California, J. D. Hyde, on the

30th day of December, 1885, refusing to issue certificate of final proof, refusing to allow entry on said land, and "declining to sell the same at present because of telegram from the Honorable Commissioner of the General Land Office, dated Dec. 2, 1885, and letter from G. L. O. dated Dec. 24, 1885," to the Hon. Commissioner of the General Land Office, upon the following grounds:

That the said decision was unlawful and unjust, (*a*) because no just reasons were given why the said refusal was made, (*b*) because no contests of any character whatever had been filed and no showing made by any party against the right of claimant, (*c*) because the act of Congress vests no power in the register or other officer to so refuse when all provisions of the law have been complied with.

Please take notice also that the claimant herein also appeals from the decision made in the above-entitled cause by the receiver at Visalia, California, Tipton Lindsey, on the 30th day of December, 1885, refusing to receive the sum of four hundred and ten dollers in gold coin actually tendered him by said claimant as payment for said land, and the fee required thereon, "on account of the aforesaid refusal of the register" to the Hon. Commissioner of the General Land Office, upon the following grounds, to wit:

That the said decision was unlawful and unjust, (*a*) because no just reasons were given why said refusal was made, (*b*) because no contests of any character whatever had been filed, and no showing whatever made by any party against the right of claimant, (*c*) because the act of Congress vests no power in the receiver or any other officer to refuse to receive such purchase money when all provisions of the law have been complied with.

Wherefore claimant prays decision from the Hon. Commissioner reversing the decision above named, and ordering certificate of proof issued, entry to be completed and evidence of sale granted by the proper officer, and upon such being done, ordering the receiver to receive the money tendered, and that certificate of final purchase be issued therefor.

Very respectfully,

BURNETTE G. HASKELL (*in propriâ personâ*),
Attorney and Counselor at Law, Room 4, New I. O. O. F. Building,
Seventh and Market streets, or 1236 21st St., San Francisco, Cal.

Oath of attorney.

LAND OFFICE AT VISALIA, CAL.,
January 13, 1886.

I, Burnette G. Haskell, an attorney and counselor at law, do solemnly swear that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto. That I have neither sought nor accepted nor attempted to exercise the functions of any office whatever under any authority or pretended authority in hostility to the United States; that I have not yielded any voluntary support to any pretended government, authority, power or constitution within the United States hostile or inimical thereto. And I do further swear that to the best of my knowledge and ability I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of an attorney before the General Land Office of the United States, so help me God.

BURNETTE G. HASKELL.

Subscribed and sworn to before me this 18th day of January, 1886.

J. D. HYDE, *Register.*

Indorsed: No. 174, Land office at Visalia, Cal. *In re* application of B. G. Haskell to purchase timber claim. Notice of appeal, exceptions and oath of attorney. Received at Land office, Visalia, January 18, 1886. J. D. Hyde, register. Burnette G. Haskell, 1236 21st St., San Francisco, Cal., in *prop. pers.* attorney for appellant.

Exhibit No. 9.

A PETITION TO THE HOUSE OF REPRESENTATIVES AND SENATE OF THE UNITED STATES IN CONGRESS ASSEMBLED.

Gentlemen: We, the undersigned residents of the county of Tulare, State of California, and citizens of the United States, most respectfully represent unto you a petition, as follows: That on the first day of October, 1890, in the closing days of the session of Congress, a bill was passed, designated as follows: "An act to set apart certain tracts of land in the State of California as forest reservations." That a portion of said bill, namely, section 3, reserves "All of townships 15 and 16 south of range twenty-nine and thirty, east of Mount Diablo meridian."

That the Congressional records show that said section of said bill was passed without debate and without proper representation to your honorable body of the facts in the case. That in the opinion of your petitioners the honorable gentleman who presented the bill for your consideration was not informed as to the circumstances, but was made to believe that the land reserved under said bill was unoccupied and unimproved Government land. That said bill was passed upon the pretext that said townships contain large forests of *Sequoia gigantea* which should be withheld from sale. That as a matter of fact only a small area of said townships contain sequoia, and that the few trees of extraordinary size are more valuable to the owners as objects of interest than to cut up into lumber. That the object of some of the promoters of the bill was not to preserve these trees, but to shut off competition in furnishing lumber. That said townships mainly comprise yellow, white and sugar pine and other merchantable timber, which is absolutely needed by the county. That the settlers comprising the Kaweah Co-operative Colony Company do not design to devastate the forest, but to thin it out and cultivate it. Under the system of forestry they have adopted, a forest tree is planted for everyone cut down, by which means it is proposed that the forest shall be preserved as a perpetual lumber resource for all time to come. The facts in relation to the settlement of the lands reserved under section 3 of said bill are as follows:

That in the beginning of the year 1885 about one hundred citizens of the State of California, all men of comparatively small means, none of them being possessed of more than one or two thousand dollars, and none of whom had exhausted their homestead, preëmption, and timber rights, desiring to build up homes for themselves and families, began a search for valuable Government land whereon to settle and improve. That in the fall of 1885 they located homesteads and made timber filings and other claims in townships 15, 16, and 17, south of range twenty-eight east, townships 15 and 16, south of range twenty-nine east, and townships 15 and 16, south of range thirty east of Mt. Diablo meridian, and immediately proceeded to settle upon and improve the same. That these said lands were situated along the canyon and ridges of the North Fork of the Kaweah River, at an altitude of from two to six thousand feet. That they had been open to settlement for years, and had been neglected, passed by, and left untaken up by everybody; first, because of their inaccessibility; and second, because of their sterility. That they were inaccessible in this: That the lower canyon was untimbered, and that its arable land lay upon slopes one and two hundred feet above the river. That there was no road into the land up the canyon; that to reach the upper slopes where timber could be found, over twenty miles of road must be made, and much of it literally cut through solid granite, said road rising on a grade of 400 feet to the mile. That they were sterile in this: That without irrigation, the said lands will not produce a support for any who settle thereon. That in order to irrigate said lands, flumes, and ditches, and waterways had to be constructed and maintained.

That, nevertheless, notwithstanding these natural obstacles and difficulties, these said settlers were so anxious to make homes for themselves that they agreed to jointly and equally give of their labor and money to build said road and improve said lands. That said lands were open to settlement under the law. That said settlers filed upon the same, actually settled upon the same, made due publication and proof in many cases, and for much of the land, tendered the price thereof to the receiver of the Visalia land office. But that, in December, 1885, three months after the settlers had filed on and made settlement upon the land, the Commissioner of the General Land Office telegraphed an order withdrawing the lands from sale, and that thereupon the receiver of the local land office refused to receive money tendered therefor. That why this was done your petitioners do not know, but believe it to have been done because it may have been feared that the settlers were not bona fide, but were employees of some syndicate or corporation, which was not and is not the truth in any sense. That being law abiding citizens, and having faithfully performed their part of the contract with the Government, and being advised by counsel that an order of withdrawal of the lands could not affect filings and settlements previously made, the said settlers appealed to the Department at Washington from the refusal of the local land office, and continued their acts of settlement and improvement, in the full consciousness that they were carrying out the spirit and letter of the law, and that their rights as citizens and bona fide settlers would be protected by the Government.

That in the past four years and a half, by co-operative effort, living all the time in tents, rough log huts and houses, and denying themselves, for the time being, the comforts and advantages of civilization, each sharing in the hard labor and expense, the said settlers have nearly finished the road required (twenty miles), said to be the finest mountain road in the State of California, at a cost of about one hundred thousand dollars; and have planted, cultivated, irrigated, and improved lands which theretofore were a barren, deserted, inaccessible, and forbidding region.

That the following letter of Mr. B. F. Allen, a special agent of the General Land Office, represents his conclusions, after a careful investigation as to the rights of these settlers:

"LOS ANGELES, *March 15, 1890.*

"MR. J. J. MARTIN:

"DEAR SIR: In reply to yours of recent date, I would say that under instructions from the General Land Office at Washington, I made full inquiry and personal investigation into the matter of the timber entries in townships 15 and 16 south, and ranges 29 and 30 east, M. D. M., covering what is known as the 'Giant Forest,' in Tulare County, California. The result of my investigation proved to me conclusively that said entries were made in good faith, that no contest had been filed, and that all legal requirements had been fulfilled by the filers. I found, moreover, that many of the filers were actual settlers, and had associated themselves together as a co-operative colony, and were making extensive and valuable improvements, such as it is the policy and purpose of the U. S. Government to foster and encourage. In view of these facts, I recommended to the Department at Washington a speedy ruling upon the suspended entries and the re-opening of the withdrawn townships to public entry. I can say, without hesitation, that I have never seen a case of timber entry where the spirit and intention of the land laws were being carried out in better faith. I do not see, under these circumstances, that any but a favorable decision can be arrived at by the Department, and that speedily.

"Yours, truly,

"B. F. ALLEN."

That these settlers, comprising what is known as the "Kaweah Co-operative Colony," during the four and a half years of their occupancy of said lands, have earned and maintained the highest reputation for commercial integrity and intelligence, and have added largely to the material wealth of Tulare County. They have not only proved their good faith by actual settlement and improvement of the land, but have shown their intention of inaugurating useful industries by the erection of valuable machinery for the development of natural resources, and are in various ways engaged in building up the interests of the locality in which they reside.

That if said bill remains a law, it will work a great injustice to a large number of worthy citizens and bona fide settlers; and by cutting off a much-needed lumber supply, will prove seriously detrimental to the general interest and welfare of the citizens of the county of Tulare.

We therefore pray for the repeal of said bill, or that part of it which includes in the reservation townships 15 and 16 south of ranges 29 and 30 east, and your petitioners will ever pray.

W. F. Thomas, mayor of Visalia, Visalia, Cal.; T. E. Henderson, chairman, board of supervisors, Tulare Co.; James Barton, supervisor; J. H. Woody, supervisor, Tulare Co.; Sam. L. N. Ellis, supervisor, Tulare Co.; J. H. Fox, supervisor, Tulare Co.; W. J. Newport, ex-supervisor, Tulare Co.; Wm. W. Cross, superior judge, Tulare Co.; C. E. Evans, county recorder, Tulare Co.; E. W. Kay, sheriff, Tulare Co.; E. J. Fridge, deputy sheriff, Tulare Co.; T. W. Holder, deputy Co. clerk, Tulare Co.; M. E. Power. dist. atty., Tulare Co.; A. C. Mill, justice of the peace, Tulare Co.; S. A. Crookshanks, county school superintendent, Visalia; D. S. Lipscomb, Co. treasurer, Visalia; W. B. Wallace, att'y at law, Visalia; John G. Knox, Co. clerk, Visalia; A. N. Murray, jr., official reporter, Visalia; Tipton Lindsey, attorney, Visalia; C. J. Giddings, cashier, bank of Visalia; N. D. F. Coffee, assessor, Visalia; J. E. Denny, farmer, Visalia; A. J. Harrell, O. Bivilly, att'y at law, Visalia; manager, Harrell & Son, bankers; E. K. Green, merchant, Los Angeles; Henry C. Dillon, farmer and lawyer, Los Angeles Co.; Samuel S. Guy, physician, Visalia, Cal.; R. H. Stevens, merchant, Visalia, Cal.; E. O. Larkins, attorney at law, Visalia, Cal.

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Having gone over the ground thoroughly, and in consideration of the evidence presented in this case, your committee would therefore make the following suggestions and recommendations: First, that the Secretary of the Interior be requested to appoint a commission consisting of three persons, one of whom, at least, shall be named by the secretary of the Keweah colonists, whose duty it shall be to examine into the rights and equities, including lands and improvements, held by each resident settler, landowner, or lawful filers upon lands within the bounds of the Yosemite and Sequoia national parks, and to ascertain what consideration or damages may be due to said settlers, and to appraise the same.

Said commission shall report their findings to the Secretary of the Interior, who shall include the amount due such settlers in the next annual estimate of appropriations for his Department.

Your committee further recommend that all lands patented to individuals within either the aforesaid parks, to which ingress or egress is now denied, shall be appraised and purchased by the Government and held for park purposes.

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